

# TABLE OF CHAPTERS

## REISSUE REVISED STATUTES

Chapter Number	No. of Articles	Chapter Number	No. of Articles
1. Accountants .....	1	45. Interest, Loans, and Debt .....	12
2. Agriculture .....	57	46. Irrigation and Regulation of Water .....	16
3. Aeronautics .....	8	47. Jails and Correctional Facilities .....	8
4. Aliens .....	1	48. Labor .....	31
5. Apportionment .....	Transferred or Repealed	49. Law .....	16
6. Assignment for Creditors .....	Repealed	50. Legislature .....	14
7. Attorneys at Law .....	2	51. Libraries and Museums .....	8
8. Banks and Banking .....	28	52. Liens .....	22
9. Bingo and Other Gambling .....	10	53. Liquors .....	4
10. Bonds .....	12	54. Livestock .....	28
11. Bonds and Oaths, Official .....	2	55. Militia .....	5
12. Cemeteries .....	14	56. Milldams .....	2
13. Cities, Counties, and Other Political Subdivisions .....	31	57. Minerals, Oil, and Gas .....	15
14. Cities of the Metropolitan Class .....	21	58. Money and Financing .....	8
15. Cities of the Primary Class .....	13	59. Monopolies and Unlawful Combinations .....	18
16. Cities of the First Class .....	11	60. Motor Vehicles .....	31
17. Cities of the Second Class and Villages .....	10	61. Natural Resources .....	2
18. Cities and Villages; Laws Applicable to All .....	30	62. Negotiable Instruments .....	3
19. Cities and Villages; Particular Classes .....	52	63. Newspapers and Periodicals .....	1
20. Civil Rights .....	5	64. Notaries Public .....	2
21. Corporations and Other Companies .....	29	65. Oaths and Affirmations .....	Transferred
22. Counties .....	4	66. Oils, Fuels, and Energy .....	21
23. County Government and Officers .....	38	67. Partnerships .....	4
24. Courts .....	13	68. Public Assistance .....	20
25. Courts; Civil Procedure .....	34	69. Personal Property .....	27
26. Courts, Municipal; Civil Procedure .....	Transferred or Repealed	70. Power Districts and Corporations .....	21
27. Courts; Rules of Evidence .....	13	71. Public Health and Welfare .....	92
28. Crimes and Punishments .....	15	72. Public Lands, Buildings, and Funds .....	25
29. Criminal Procedure .....	46	73. Public Lettings and Contracts .....	6
30. Decedents' Estates; Protection of Persons and Property .....	41	74. Railroads .....	16
31. Drainage .....	10	75. Public Service Commission .....	10
32. Elections .....	17	76. Real Property .....	34
33. Fees and Salaries .....	1	77. Revenue and Taxation .....	63
34. Fences, Boundaries, and Landmarks .....	3	78. Salvages .....	Repealed
35. Fire Companies and Firefighters .....	14	79. Schools .....	24
36. Fraud .....	7	80. Servicemembers and Veterans .....	9
37. Game and Parks .....	15	81. State Administrative Departments .....	37
38. Health Occupations and Professions .....	34	82. State Culture and History .....	5
39. Highways and Bridges .....	27	83. State Institutions .....	12
40. Homesteads .....	1	84. State Officers .....	16
41. Hotels and Inns .....	2	85. State University, State Colleges, and Postsecondary Education .....	24
42. Husband and Wife .....	12	86. Telecommunications and Technology .....	9
43. Infants and Juveniles .....	45	87. Trade Practices .....	8
44. Insurance .....	90	88. Warehouses .....	6
		89. Weights and Measures .....	2
		90. Special Acts .....	5
		91. Uniform Commercial Code .....	12

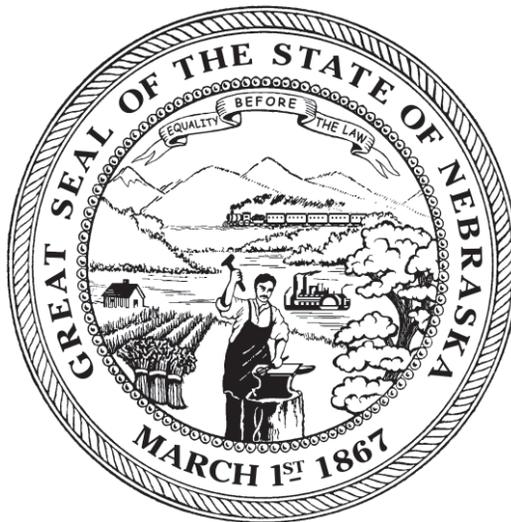


# REVISED STATUTES OF NEBRASKA

## REISSUE OF VOLUME 5

### 2014

COMPRISING ALL THE STATUTORY LAWS OF A  
GENERAL NATURE IN FORCE AT DATE OF  
PUBLICATION ON THE SUBJECTS ASSIGNED  
TO CHAPTERS 78 TO 81, ARTICLE 14, INCLUSIVE



Published by the Revisor of Statutes

COPYRIGHT, 2014

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 5 of the Revised Statutes of Nebraska, 2014, contains all of the laws set forth in Chapters 78 to 81, article 14, appearing in Volume 5, Revised Statutes of Nebraska, 2008, as amended and supplemented by the One Hundredth Legislature, Second Session, 2008, through the One Hundred Third Legislature, Second Session, 2014, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl  
Revisor of Statutes

Lincoln, Nebraska  
July 1, 2014

Recommended manner of  
citation from  
this volume

REISSUE REVISED STATUTES  
OF NEBRASKA, 2014

(in full)

R.R.S.2014

(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
Micah Uher .....	Legal Counsel
Mark Ludwig .....	Legal Counsel
Jane Plettner-Nielson .....	Statute Technician
Edith Bottsford .....	Assistant Statute Technician
Suzanne Tesina .....	Assistant Statute Technician
Brandi Thorn .....	Assistant Statute Technician
Evan Marolf .....	Assistant Statute Technician
Marilee McPherson .....	Assistant Statute Technician
Chiona Morris .....	Assistant Statute Technician



## CHAPTER 78

### SALVAGES

Section

- 78-101. Repealed. Laws 1981, LB 497, § 1.
- 78-102. Repealed. Laws 1981, LB 497, § 1.
- 78-103. Repealed. Laws 1981, LB 497, § 1.
- 78-104. Repealed. Laws 1981, LB 497, § 1.
- 78-105. Repealed. Laws 1981, LB 497, § 1.
- 78-106. Repealed. Laws 1981, LB 497, § 1.
- 78-107. Repealed. Laws 1981, LB 497, § 1.
- 78-108. Repealed. Laws 1981, LB 497, § 1.
- 78-109. Repealed. Laws 1981, LB 497, § 1.

**78-101 Repealed. Laws 1981, LB 497, § 1.**

**78-102 Repealed. Laws 1981, LB 497, § 1.**

**78-103 Repealed. Laws 1981, LB 497, § 1.**

**78-104 Repealed. Laws 1981, LB 497, § 1.**

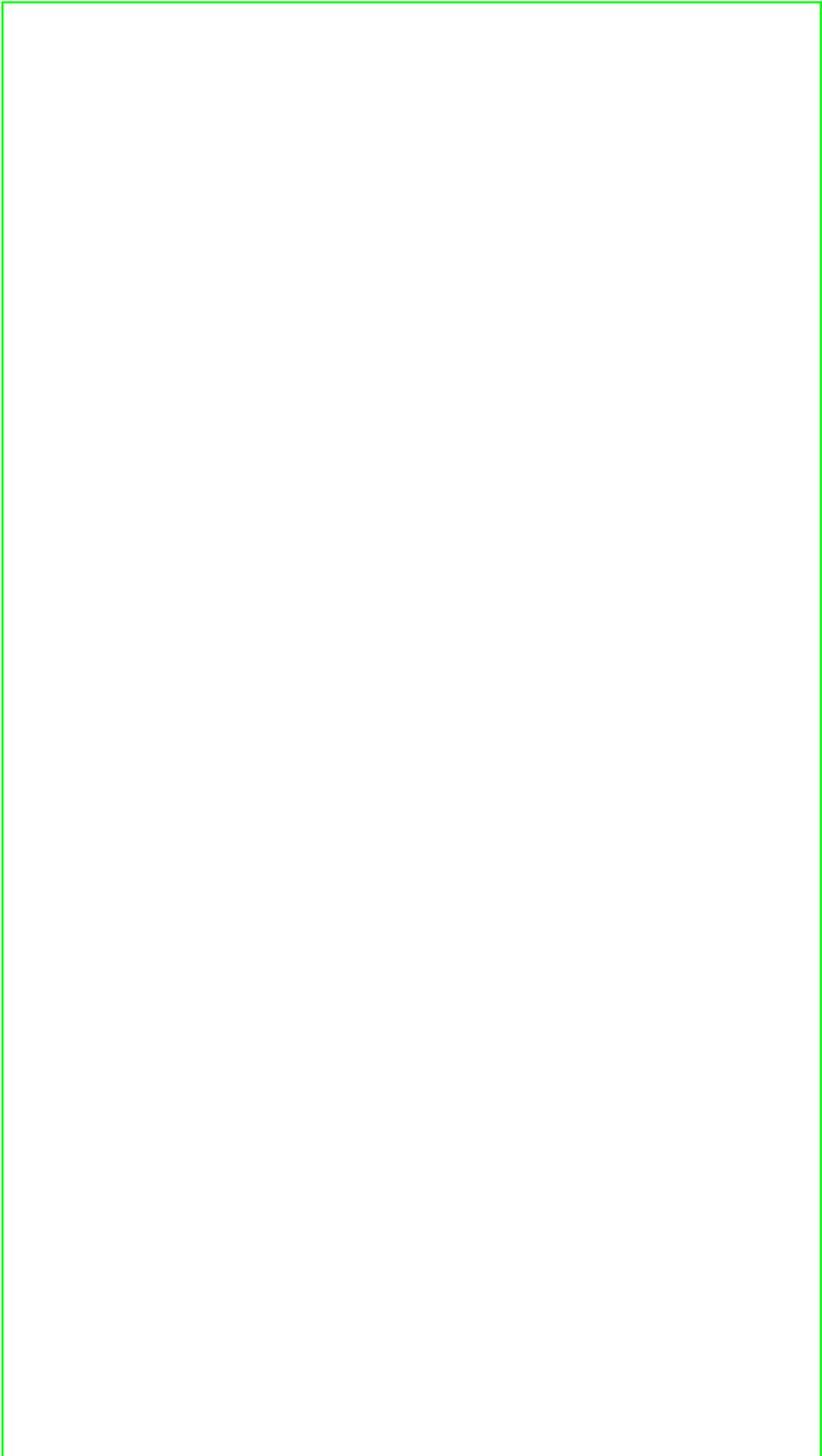
**78-105 Repealed. Laws 1981, LB 497, § 1.**

**78-106 Repealed. Laws 1981, LB 497, § 1.**

**78-107 Repealed. Laws 1981, LB 497, § 1.**

**78-108 Repealed. Laws 1981, LB 497, § 1.**

**78-109 Repealed. Laws 1981, LB 497, § 1.**



## SCHOOLS

# CHAPTER 79

## SCHOOLS

### Article.

1. Definitions and Classifications. 79-101 to 79-104.
2. Provisions Relating to Students.
  - (a) Compulsory Education. 79-201 to 79-210.
  - (b) Minimum School Term. 79-211 to 79-213.
  - (c) Admission Requirements. 79-214 to 79-223.
  - (d) Health Care. 79-224 to 79-231.
  - (e) Enrollment Option Program. 79-232 to 79-247.
  - (f) Health Inspections. 79-248 to 79-253.
  - (g) Student Discipline. 79-254 to 79-296.
  - (h) Student Organizations. 79-297 to 79-2,103.
  - (i) Student Files. 79-2,104, 79-2,105.
  - (j) Student Personnel Services. 79-2,106, 79-2,107.
  - (k) Nebraska Student Exchange Act. 79-2,108 to 79-2,113. Repealed.
  - (l) Equal Opportunity in Education. 79-2,114 to 79-2,124.
  - (m) Student Fees. 79-2,125 to 79-2,135.
  - (n) Part-Time Enrollment. 79-2,136.
  - (o) Bullying Prevention and Education. 79-2,137.
  - (p) Lindsay Ann Burke Act and Dating Violence. 79-2,138 to 79-2,142.
  - (q) State School Security Director. 79-2,143 to 79-2,146.
3. State Department of Education.
  - (a) Departmental Structure and Duties. 79-301 to 79-303.
  - (b) Commissioner of Education. 79-304 to 79-309.01.
  - (c) State Board of Education. 79-310 to 79-321.
4. School Organization and Reorganization.
  - (a) Legislative Goals, Directives, and Limitations for Reorganization of School Districts. 79-401 to 79-404.
  - (b) Legal Status, Formation, and Territory. 79-405 to 79-412.
  - (c) Petition Process for Reorganization. 79-413 to 79-431.
  - (d) Reorganization of School Districts Act. 79-432 to 79-451.
  - (e) Dissolution of Class I and Class II School Districts. 79-452 to 79-455.
  - (f) Freeholders' Petitions. 79-456 to 79-459.
  - (g) Special Property Transfers and Dissolution and Annexation of School Districts. 79-460 to 79-478.
  - (h) Procedures and Rules for New or Changed Districts. 79-479 to 79-497.
  - (i) Depopulated Districts. 79-498, 79-499.
  - (j) Special Provisions for Affiliated Districts. 79-4,100 to 79-4,104.
  - (k) Reorganization Studies. 79-4,105 to 79-4,107. Repealed.
  - (l) Unified System. 79-4,108 to 79-4,111.
  - (m) Reorganization of Class I and VI School Districts. 79-4,112 to 79-4,116. Repealed.
  - (n) Learning Community Reorganization Act. 79-4,117 to 79-4,130.
5. School Boards.
  - (a) School Board Powers. 79-501 to 79-524.
  - (b) School Board Duties. 79-525 to 79-539.
  - (c) School Board Elections and Membership. 79-540 to 79-553.
  - (d) School Board Meetings and Procedures. 79-554 to 79-563.
  - (e) School Board Officers. 79-564 to 79-597.
  - (f) Providing Education Outside the District. 79-598 to 79-5,108.
6. School Transportation. 79-601 to 79-613.
7. Accreditation, Curriculum, and Instruction.
  - (a) Mission and Intent for the Public Schools. 79-701, 79-702.
  - (b) Accreditation. 79-703, 79-704.

## SCHOOLS

### Article.

- (c) Curriculum and Instruction Requirements. 79-705 to 79-728.
  - (d) High School Graduation Requirements and Equivalency Diploma. 79-729 to 79-733.
  - (e) Books, Equipment, and Supplies. 79-734 to 79-737.
  - (f) Vocational Education. 79-738 to 79-747.
  - (g) School Restructuring. 79-748 to 79-750.
  - (h) Nebraska Schools Accountability Commission. 79-751 to 79-756. Repealed.
  - (i) Quality Education Accountability Act. 79-757 to 79-762.
  - (j) Career Education Partnership Act. 79-763 to 79-768. Repealed.
  - (k) Learning Community Focus School or Program. 79-769.
  - (l) Certificate of Attendance. 79-770.
  - (m) Nebraska Community College Degree. 79-771.
  - (n) Center for Student Leadership and Extended Learning Act. 79-772 to 79-775.
  - (o) Policy to Share Student Data. 79-776.
  - (p) Career Academy. 79-777.
8. Teachers and Administrators.
- (a) Certificates. 79-801 to 79-816.
  - (b) Employment Contracts. 79-817 to 79-823.
  - (c) Tenure. 79-824 to 79-845.
  - (d) Reduction in Force. 79-846 to 79-849.
  - (e) Unified System or Reorganized School Districts. 79-850 to 79-858.
  - (f) Professional Practices Commission. 79-859 to 79-871.
  - (g) Professional or Labor Organizations. 79-872 to 79-874.
  - (h) Student Teacher or Intern. 79-875 to 79-878.
  - (i) Professional Staff Development Program. 79-879. Repealed.
  - (j) Help Education Lead to Prosperity Act. 79-880 to 79-892. Repealed.
  - (k) Interstate Agreement on Qualification of Educational Personnel. 79-893 to 79-895. Repealed.
  - (l) Miscellaneous. 79-896 to 79-8,110.
  - (m) Criminal History Record Information. 79-8,111 to 79-8,117. Repealed.
  - (n) Teacher Salary Task Force. 79-8,118 to 79-8,123. Repealed.
  - (o) Master Teacher Program Act. 79-8,124 to 79-8,131.
  - (p) Excellence in Teaching Act. 79-8,132 to 79-8,140.
  - (q) Teacher Corps AmeriCorps Education Award Program. 79-8,141.
9. School Employees Retirement Systems.
- (a) Employees of Other than Class V District. 79-901 to 79-977.03.
  - (b) Employees Retirement System in Class V Districts. 79-978 to 79-9,118.
10. School Taxation, Finance, and Facilities.
- (a) Tax Equity and Educational Opportunities Support Act. 79-1001 to 79-1033.
  - (b) School Funds. 79-1034 to 79-1072.04.
  - (c) School Taxation. 79-1073 to 79-1082.
  - (d) School Budgets and Accounting. 79-1083 to 79-1093.
  - (e) Site and Facilities Acquisition, Maintenance, and Disposition. 79-1094 to 79-10,136.
  - (f) School Breakfast Program. 79-10,137 to 79-10,139.
  - (g) Summer Food Service Program. 79-10,140 to 79-10,142.
11. Special Populations and Services.
- (a) Early Childhood Education. 79-1101 to 79-1104.05.
  - (b) Gifted Children and Learners with High Ability. 79-1105 to 79-1109.
  - (c) Special Education.
    - Subpart (i)—Special Education Act. 79-1110 to 79-1184.
    - Subpart (ii)—Department Duties. 79-1185 to 79-1188.
  - (d) Bridge Programs. 79-1189 to 79-1197.
  - (e) Programs for Students with Hearing Impairments. 79-1198 to 79-11,108. Repealed.
  - (f) Students who are Blind or Visually Impaired. 79-11,109 to 79-11,120.
  - (g) Vocational Rehabilitation. 79-11,121 to 79-11,132.
  - (h) Adult Education. 79-11,133 to 79-11,135.
  - (i) Seamless Delivery System Pilot Project. 79-11,136 to 79-11,141. Repealed.
  - (j) Community-Based Neurobehavioral Action Plan Act. 79-11,142 to 79-11,149. Repealed.

## SCHOOLS

### Article.

- (k) High-Needs Education Coordinator. 79-11,150. Repealed.
- (l) Special Education Services Task Force. 79-11,151 to 79-11,154. Repealed.
- (m) Student Achievement Coordinator. 79-11,155.
- 12. Educational Service Units Act. 79-1201 to 79-1249.
- 13. Educational Technology and Telecommunications.
  - (a) Educational Technology. 79-1301 to 79-1311.
  - (b) Educational Telecommunications. 79-1312 to 79-1327.
  - (c) Distance Education. 79-1328 to 79-1337.
- 14. Federation of School Districts. Repealed.
- 15. Compact for Education. 79-1501 to 79-1504.
- 16. Private, Denominational, or Parochial Schools. 79-1601 to 79-1607.
- 17. Statutory Construction. 79-1701 to 79-1703.
- 18. Nebraska Elementary and Secondary School Finance Authority Act. 79-1801 to 79-1852.
- 19. Nebraska Read, Educate, and Develop Youth Act. 79-1901 to 79-1905.
- 20. Nebraska Schools Construction Alternatives Act. 79-2001 to 79-2015.
- 21. Learning Community. 79-2101 to 79-2121.
- 22. Interstate Compact on Educational Opportunity for Military Children. 79-2201 to 79-2206.
- 23. Diploma of High School Equivalency Assistance Act. 79-2301 to 79-2307.
- 24. Superintendent Pay Transparency Act. 79-2401 to 79-2405.

### Cross References

#### Constitutional provisions:

- Board of Education, State, see Article VII, sections 2 to 4, Constitution of Nebraska.
- Board of Educational Lands and Funds, composition, powers, see Article VII, section 6, Constitution of Nebraska.
- Bonds of indebtedness, special acts authorizing, void, see Article III, section 18, Constitution of Nebraska.
- Commissioner of Education, see Article VII, sections 2 and 4, Constitution of Nebraska.
- Delinquent children, schools for, see Article VII, section 12, Constitution of Nebraska.
- Department of Education, State, see Article VII, section 2, Constitution of Nebraska.
- Educational lands, sale at public auction, see Article VII, section 6, Constitution of Nebraska.
- English language used in schools, see Article I, section 27, Constitution of Nebraska.
- Fines, penalties, and license money, see Article VII, section 5, Constitution of Nebraska.
- Free instruction in common schools, see Article VII, section 1, Constitution of Nebraska.
- Permanent school fund, see Article VII, section 7, Constitution of Nebraska.
- Sectarian instruction, prohibited, see Article VII, section 11, Constitution of Nebraska.
- Taxation, exemptions, see Article VIII, section 2, Constitution of Nebraska.
- Abatement of hazardous substances**, NIFA funding, see sections 58-202 et seq., 58-207.01, and 58-219 et seq.
- Alcoholic liquors**, location of place of business, see section 53-177.
- Anabolic steroid prohibited acts**, see section 48-232 et seq.
- Athletic contest**, tampering, penalty, see section 28-614.
- Barbering schools**, see Chapter 71, article 2.
- Beatrice State Developmental Center**, see sections 83-217 to 83-223.
- Bids**, construction or repair of buildings, see section 73-106.
- Board of Educational Lands and Funds**, see section 72-201 et seq.
- Body art**, training, see the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, section 38-1001.
- Boiler Inspection Act**, see section 48-719.
- Bonds and indebtedness**, see Chapter 10.
- Budget Act, Nebraska**, see section 13-501 et seq.
- Career schools**, Private Postsecondary Career School Act, see section 85-1601.
- Child abuse**, school employees' duty to report, see section 28-711.
- Child labor laws**, generally, see Chapter 48, article 3.
- Claims against delinquent personal taxes**, setoff, see section 77-1771.
- Clinics**, school-based, funding restrictions, see section 71-7606.
- Colleges and universities**, see Chapter 85.
- Commission of Industrial Relations**, Industrial Relations Act, see section 48-801 et seq.
- Community colleges**, see section 85-1501 et seq.
- Cosmetology**, training, see the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, section 38-1001.
- County roads leading to rural schools**, classification, see section 39-2001.
- Developmental Disabilities Services Act**, see section 83-1201.
- Disabilities**, infants and toddlers with, see Early Intervention Act, section 43-2501.
- Early childhood education**:
  - Early Childhood Professional Record System, Nebraska, see section 71-1962.
  - Quality Child Care Act, see section 43-2601.
  - Step Up to Quality Child Care Act, see section 71-1952.
- Early Intervention Act**, see section 43-2501.
- Education Innovation Fund**, state lottery proceeds, see section 9-812.
- Elections**, nonpolitical, see section 32-609.
- Electrology**, training, see the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, section 38-1001.
- Esthetics**, training, see the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, section 38-1001.

**Expense reimbursement**, Local Government Miscellaneous Expenditure Act, see section 13-2201 et seq.  
**Fire drills**, see section 81-527.  
**Firearms**, possession in or near, see section 28-1204.04.  
**Funds**, duty of county treasurer, see section 23-1601.  
**Gun-free school zones**, see section 28-1204.04.  
**Immunization**, Childhood Vaccine Act, see section 71-526.  
**Interlocal Cooperation Act**, see section 13-801.  
**Joint Public Agency Act**, see section 13-2501.  
**Juvenile services**, Health and Human Services, Office of Juvenile Services Act, see section 43-401.  
**Libraries**, contract with, see sections 51-208 and 51-217.  
**Missing Children Identification Act**, see section 43-2001.  
**Nail technology**, training, see the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, section 38-1001.  
**Night school**, certificate of employment, see section 48-308.  
**Office for child development and early childhood education services**, see section 43-2619 et seq.  
**Permanent school fund**, see section 79-1035.01.  
**Pioneers' Memorial Day**, schools hold suitable exercises, see section 82-112.  
**Private Postsecondary Career School Act**, see section 85-1601.  
**Sales tax exemption**, see sections 77-2704.15 and 77-2704.25.  
**Saline lands**, in general, see section 72-501 et seq.  
**Scholarships, postsecondary:**  
     Access College Early Scholarship Program Act, see section 85-2101.  
     Nebraska Opportunity Grant Act, see section 85-1901.  
     Student Diversity Scholarship Program Act, see section 85-9,177.  
**School lands:**  
     In general, see Chapter 72, article 2.  
     Purchased on credit, tax sale of, subject to rights of state, see section 77-1848.  
**School lands and funds**, see Chapter 72, article 2.  
**School officers**, bonds and oaths, see Chapter 11.  
**School permit**, limited driving privileges, see section 60-4,124.  
**Schoolhouses:**  
     Construction, bids for, procedure, see Chapter 73.  
     Contractor, labor and material payment bond, see section 52-118.  
**School-based health centers:**  
     Advisory Council, School Health Center, see section 68-968.  
     Medical assistance program reimbursement, see section 68-908.  
**School-based health clinics**, funding restrictions, see section 71-7606.  
**State Day**, observance of, see section 84-107.  
**State Lottery Act**, use of proceeds for educational purposes, see section 9-812.  
**Temporary school funds**, see section 79-1035.02.  
**Unemployment compensation law**, employer exempt, see section 48-604.  
**Universities and colleges**, see Chapter 85.  
**Veterans Day**, observance of, see section 84-104.01.  
**Warrants**, payment, see section 77-2201 et seq.

**ARTICLE 1**

**DEFINITIONS AND CLASSIFICATIONS**

Section

- 79-101. Terms, defined.
- 79-102. School districts; classification.
- 79-103. Classification of school districts; how determined.
- 79-104. Classification of school districts; change; Commissioner of Education; duties.

**79-101 Terms, defined.**

For purposes of Chapter 79:

(1) School district means the territory under the jurisdiction of a single school board authorized by Chapter 79;

(2) School means a school under the jurisdiction of a school board authorized by Chapter 79;

(3) Legal voter means a registered voter as defined in section 32-115 who is domiciled in a precinct or ward in which he or she is registered to vote and which precinct or ward lies in whole or in part within the boundaries of a school district for which the registered voter chooses to exercise his or her right to vote at a school district election or at an annual or special meeting of a Class I school district;

(4) Prekindergarten programs means all early childhood programs provided for children who have not reached the age of five by the date provided in section 79-214 for kindergarten entrance;

(5) Elementary grades means grades kindergarten through eight, inclusive;

(6) High school grades means all grades above the eighth grade;

(7) School year means (a) for elementary grades other than kindergarten, the time equivalent to at least one thousand thirty-two instructional hours and (b) for high school grades, the time equivalent to at least one thousand eighty instructional hours;

(8) Instructional hour means a period of time, at least sixty minutes, which is actually used for the instruction of students;

(9) Teacher means any certified employee who is regularly employed for the instruction of pupils in the public schools;

(10) Administrator means any certified employee such as superintendent, assistant superintendent, principal, assistant principal, school nurse, or other supervisory or administrative personnel who do not have as a primary duty the instruction of pupils in the public schools;

(11) School board means the governing body of any school district. Board of education has the same meaning as school board;

(12) Teach means and includes, but is not limited to, the following responsibilities: (a) The organization and management of the classroom or the physical area in which the learning experiences of pupils take place; (b) the assessment and diagnosis of the individual educational needs of the pupils; (c) the planning, selecting, organizing, prescribing, and directing of the learning experiences of pupils; (d) the planning of teaching strategies and the selection of available materials and equipment to be used; and (e) the evaluation and reporting of student progress;

(13) Permanent school fund means the fund described in section 79-1035.01;

(14) Temporary school fund means the fund described in section 79-1035.02; and

(15) School lands means the lands described in section 79-1035.03. Educational lands has the same meaning as school lands.

The State Board of Education may adopt and promulgate rules and regulations to define school day and other appropriate units of the school calendar.

**Source:** Laws 1881, c. 78, subdivision I, § 1, p. 331; R.S.1913, § 6700; C.S.1922, § 6238; C.S.1929, § 79-101; R.S.1943, § 79-101; Laws 1949, c. 256, § 1, p. 690; Laws 1971, LB 802, § 1; Laws 1984, LB 994, § 3; Laws 1988, LB 1197, § 1; Laws 1993, LB 348, § 5; R.S.1943, (1994), § 79-101; Laws 1996, LB 900, § 1; Laws 1997, LB 345, § 5; Laws 1999, LB 813, § 5; Laws 2003, LB 67, § 2; Laws 2010, LB1006, § 1.

A legal voter is one who is eligible to vote at an election for school district officers. *Harnapp v. Bigelow*, 178 Neb. 440, 133 N.W.2d 611 (1965).

A school district is a unit of local self-government, democratic in form, possessing no rights or powers beyond those conferred

upon it by the terms of the statutes of its creation. *Schulz v. Dixon County*, 134 Neb. 549, 279 N.W. 179 (1938).

Jurisdiction, as applied to taxation, means the power and authority to levy tax upon property within the limits of the school district for school purposes. *Chicago, B. & Q. R.R. Co. v. Cass County*, 51 Neb. 369, 70 N.W. 955 (1897).

### **79-102 School districts; classification.**

School districts in this state are classified as follows:

(1) Class I includes any school district that maintains only elementary grades under the direction of a single school board;

(2) Class II includes any school district embracing territory having a population of one thousand inhabitants or less that maintains both elementary and high school grades under the direction of a single school board;

(3) Class III includes any school district embracing territory having a population of more than one thousand and less than one hundred fifty thousand inhabitants that maintains both elementary and high school grades under the direction of a single school board;

(4) Class IV includes any school district embracing territory having a population of one hundred thousand or more inhabitants with a city of the primary class within the territory of the district that maintains both elementary and high school grades under the direction of a single school board;

(5) Class V includes any school district whose employees participate in a retirement system established pursuant to the Class V School Employees Retirement Act and which embraces territory having a city of the metropolitan class within the territory of the district that maintains both elementary grades and high school grades under the direction of a single school board and any school district with territory in a city of the metropolitan class created pursuant to the Learning Community Reorganization Act and designated as a Class V school district in the reorganization plan; and

(6) Class VI includes any school district in this state that maintains only a high school, or a high school and grades seven and eight or six through eight as provided in section 79-411, under the direction of a single school board.

**Source:** Laws 1949, c. 256, § 2, p. 691; Laws 1959, c. 379, § 1, p. 1320; Laws 1981, LB 16, § 1; R.S.1943, (1994), § 79-102; Laws 1996, LB 900, § 2; Laws 1997, LB 345, § 6; Laws 1998, LB 629, § 1; Laws 2003, LB 394, § 1; Laws 2005, LB 126, § 8; Laws 2006, LB 1024, § 15; Referendum 2006, No. 422.

#### Cross References

**City of the metropolitan class**, population, see section 14-101.

**City of the primary class**, population, see section 15-101.

**Class V School Employees Retirement Act**, see section 79-978.01.

**Commissioner of Education**, assign number to each district, see section 79-307.

**Learning Community Reorganization Act**, see section 79-4,117.

School districts from and to which land may be transferred under provisions of former section 79-403 are defined and classified in this section. Klecan v. Schmal, 196 Neb. 100, 241 N.W.2d 529 (1976).

In proceedings for the transfer of land from one district to another, the advantage or disadvantage of the districts is not the deciding issue. Friesen v. Clark, 192 Neb. 227, 220 N.W.2d 12 (1974).

Members of school board act in a representative capacity and not as individuals. Greer v. Chelewski, 162 Neb. 450, 76 N.W.2d 438 (1956).

Former article 6 district was classified as Class II district. Fulk v. School District No. 8 of Lancaster County, 155 Neb. 630, 53 N.W.2d 56 (1952).

District involved was a Class III district. State ex rel. Shine-man v. Board of Education, 152 Neb. 644, 42 N.W.2d 168 (1950).

### 79-103 Classification of school districts; how determined.

The number of inhabitants in any school district shall, for the purpose of determining the class to which such district belongs, be the number of inhabitants ascertained by the most recent United States census or by a certified census taken of the district at the direction of the school board or board of education of the school district and approved by the State Board of Education. The school board or board of education of any school district is authorized to

contract for a special United States Census of the district if the board determines that such a census is necessary.

**Source:** Laws 1949, c. 256, § 5, p. 692; Laws 1955, c. 315, § 1, p. 971; Laws 1971, LB 212, § 1; R.S.1943, (1994), § 79-105; Laws 1996, LB 900, § 3.

**79-104 Classification of school districts; change; Commissioner of Education; duties.**

Whenever any Class II, III, or IV school district attains the number of inhabitants which requires its reclassification as a Class III, IV, or V school district, respectively, the Commissioner of Education shall reclassify such district as a district of the next higher class. A Class III school district may be reclassified as a Class II school district upon application of the board of education of such district if the commissioner finds that the number of inhabitants of such district has decreased to the level established for Class II school districts. Any reclassification pursuant to this section shall become effective at the beginning of the next fiscal year after the order of the commissioner. Within fifteen days after the reclassification of any school district, the commissioner shall notify the county clerk or election commissioner, of the county in which the greatest number of legal voters in the school district reside, of such change in classification and the effective date of such change.

**Source:** Laws 1949, c. 256, § 6, p. 692; Laws 1971, LB 212, § 2; Laws 1981, LB 446, § 34; R.S.1943, (1994), § 79-106; Laws 1996, LB 900, § 4; Laws 1997, LB 345, § 7.

There is no mandatory change to a lesser-numbered school district as a result of a decrease in population. Quiring v. School Dist. No. 91 of Hamilton and York Counties, 205 Neb. 9, 285 N.W.2d 834 (1979).

## ARTICLE 2

### PROVISIONS RELATING TO STUDENTS

#### (a) COMPULSORY EDUCATION

Section	
79-201.	Compulsory education; attendance required; exceptions; reports required.
79-202.	Compulsory attendance; withdrawal of child from school; exempt from mandatory attendance; exit interview; withdrawal form; validity; child at least sixteen years of age; other enrollment options; later enrollment; effect; Commissioner of Education; duties.
79-203.	Compulsory attendance; necessarily employed children; permit.
79-204.	Compulsory attendance; necessarily employed children; continuation schools; attendance required.
79-205.	Compulsory attendance; record of attendance; annual attendance reports; made where.
79-206.	Compulsory attendance; nonattendance lists; transmission to enforcement officers.
79-207.	Compulsory attendance; entry or withdrawal of student; teachers' attendance reports.
79-208.	Compulsory attendance; attendance officers; powers and duties; compensation.
79-209.	Compulsory attendance; nonattendance; school district; duties; collaborative plan; considerations; referral to county attorney; notice.
79-210.	Violations; penalty.

#### (b) MINIMUM SCHOOL TERM

79-211.	Minimum school term.
79-212.	Kindergarten program; minimum hours.

## SCHOOLS

### Section

- 79-213. School; failure to maintain; loss of state funds; exceptions.
- (c) ADMISSION REQUIREMENTS
- 79-214. Admission of children; kindergarten; age; evidence of physical examination; visual evaluation; when; exception.
- 79-215. Students; admission; tuition; persons exempt; department; duties.
- 79-216. Children of members in military service; children of parents employed by federal government and living on national parks; admission discretionary; when exempt from tuition.
- 79-217. School board and governing authority; student; immunization against certain contagious diseases; exception.
- 79-218. School board and governing authority; immunization clinics; request assistance.
- 79-219. Student; immunization status; Department of Health and Human Services; rules and regulations.
- 79-220. Child; physical examination; visual evaluation; immunization; right of refusal.
- 79-221. Immunization; when not required.
- 79-222. Immunizations; provisional enrollment; conditions.
- 79-223. Violations; penalty.
- (d) HEALTH CARE
- 79-224. Asthma or anaphylaxis condition; self-management by student; conditions; request; authorization.
- 79-225. Diabetic condition; self-management by student; conditions; request; authorization.
- 79-226. Repealed. Laws 1997, LB 347, § 59.
- 79-227. Repealed. Laws 1997, LB 347, § 59.
- 79-228. Repealed. Laws 1997, LB 347, § 59.
- 79-229. Repealed. Laws 1997, LB 347, § 59.
- 79-230. Repealed. Laws 1997, LB 347, § 59.
- 79-231. Repealed. Laws 1997, LB 347, § 59.
- (e) ENROLLMENT OPTION PROGRAM
- 79-232. Legislative findings.
- 79-233. Terms, defined.
- 79-234. Enrollment option program; established; limitations.
- 79-235. Option students; treatment; building assignment.
- 79-236. Program; implementation.
- 79-237. Attendance; application; cancellation; forms.
- 79-238. Application acceptance and rejection; standards; request for release; standards and conditions.
- 79-239. Application; request for release; rejection; notice; appeal.
- 79-240. Relocation; automatic acceptance; deadlines waived.
- 79-241. Transportation; fee authorized; reimbursement; when.
- 79-242. Graduation credits; award of diploma.
- 79-243. School district; provide information.
- 79-244. Program; effect on contracting; child with a disability; restriction on transfer.
- 79-245. Tax Equity and Educational Opportunities Support Act; applicability.
- 79-246. Special education programs; reimbursement to option school district.
- 79-247. Repealed. Laws 1997, LB 347, § 59.
- (f) HEALTH INSPECTIONS
- 79-248. Pupils; health inspections; notice of defects; contagious or infectious disease; duty of school district.
- 79-249. Pupils; health inspections; rules; duties of Department of Health and Human Services; compliance with Medication Aide Act; when.
- 79-250. Pupils; health inspections; when required.
- 79-251. Pupils; health inspections; duty of school board.
- 79-252. Pupils; health inspections; employment of physicians authorized.
- 79-253. Pupils; health inspections; violation; penalty.

## PROVISIONS RELATING TO STUDENTS

### Section

#### (g) STUDENT DISCIPLINE

- 79-254. Act, how cited.
- 79-255. Act; purpose.
- 79-256. Terms, defined.
- 79-257. School board or board of education; emergency disciplinary actions; authorized.
- 79-258. Administrative and teaching personnel; authorized actions.
- 79-259. Student suspension, expulsion, or exclusion; not a violation of compulsory attendance; compliance with other laws required.
- 79-260. Notice; when given.
- 79-261. School board or board of education; powers; delegation of authority.
- 79-262. School board or board of education; rules and standards; establish; distribute and post.
- 79-263. School district; policy regarding firearms; requirements.
- 79-264. Student; exclusion; circumstances; emergency exclusion; procedure.
- 79-265. Principal; suspend student; grounds; procedure; written statement; conference; guidelines for completion of classwork.
- 79-266. Pre-expulsion procedures; when; expelled student; alternative assignments; suspension of enforcement; agreement between school boards; reinstatement; when; expungement.
- 79-266.01. Expelled student; enrollment in public school; when.
- 79-267. Student conduct constituting grounds for long-term suspension, expulsion, or mandatory reassignment; enumerated; alternatives for truant or tardy students.
- 79-268. Long-term suspension, expulsion, or mandatory reassignment; procedures; enumerated.
- 79-269. Long-term suspension, expulsion, or mandatory reassignment; hearing; procedure; hearing examiner; how designated; examination of records.
- 79-270. Hearing examiner; duties.
- 79-271. Hearing; not requested within five days; recommended punishment; effect.
- 79-272. Hearing; requested within thirty days; effect.
- 79-273. Hearing; by whom attended; witnesses; student excluded; when.
- 79-274. Hearing; legal counsel; powers and duties.
- 79-275. Hearing; student; testimony.
- 79-276. Hearing; evidence on student's conduct and records.
- 79-277. Hearing; rules of evidence or courtroom procedures; not applicable.
- 79-278. Hearing; witnesses; testimony; cross-examination.
- 79-279. Hearing; witnesses; immunity.
- 79-280. Hearing; recorded; how paid.
- 79-281. Hearing; joint hearing; separate hearings; when.
- 79-282. Hearing; hearing examiner; report; contents; review; final disposition; how determined.
- 79-283. Hearing; final disposition; written notice; effect; period of expulsion; review; when; procedure; readmittance.
- 79-284. Case record; contents.
- 79-285. Hearing; appeal to school board or board of education; procedure.
- 79-286. Hearing; appeal; school board or board of education; powers and duties.
- 79-287. Hearing; appeal; board; final action.
- 79-288. Final decision; judicial review; appeal to district court; other relief.
- 79-289. Judicial review; procedure.
- 79-290. Judicial review; transcript of record and proceedings; responsive pleading not required.
- 79-291. Judicial review; conducted without a jury; grounds for judicial action.
- 79-292. Appeal.
- 79-293. Nebraska Criminal Code violation; principal or principal's designee; notify law enforcement authorities; immunity.
- 79-294. Removal of minor from school premises; release to peace officer; principal or other school official; duties; peace officer; duties; juvenile court review; when.

## SCHOOLS

### Section

79-295. Corporal punishment; prohibited.  
79-296. Anabolic steroids; additional sanction.

#### (h) STUDENT ORGANIZATIONS

79-297. Repealed. Laws 2013, LB 410, § 24.  
79-298. Repealed. Laws 2013, LB 410, § 24.  
79-299. Repealed. Laws 2013, LB 410, § 24.  
79-2,100. Repealed. Laws 2013, LB 410, § 24.  
79-2,101. Public schools; membership in secret organizations, prohibited.  
79-2,102. Public schools; secret organizations; denial of school privileges; expulsion.  
79-2,103. Public schools; outside organizations; rushing prohibited; violation; penalty.

#### (i) STUDENT FILES

79-2,104. Access to school files or records; limitation; fees; disciplinary material; removed and destroyed; when; sharing of student data, records, and information.  
79-2,105. School files or records; provided upon student's transfer.

#### (j) STUDENT PERSONNEL SERVICES

79-2,106. Department; gifts, devises, and bequests; accept; loans; terms and conditions.  
79-2,107. Student personnel services; supervision.

#### (k) NEBRASKA STUDENT EXCHANGE ACT

79-2,108. Repealed. Laws 1997, LB 347, § 59.  
79-2,109. Repealed. Laws 1997, LB 347, § 59.  
79-2,110. Repealed. Laws 1997, LB 347, § 59.  
79-2,111. Repealed. Laws 1997, LB 347, § 59.  
79-2,112. Repealed. Laws 1997, LB 347, § 59.  
79-2,113. Repealed. Laws 1997, LB 347, § 59.

#### (l) EQUAL OPPORTUNITY IN EDUCATION

79-2,114. Act, how cited.  
79-2,115. Terms, defined.  
79-2,116. Legislative findings; discriminatory practices enumerated.  
79-2,117. Rules and regulations; institutions adopt; department; duties.  
79-2,118. Violation; complaint; filing; disposition; procedure; governing board; duties.  
79-2,119. Disposition of complaint; claimant; acceptance.  
79-2,120. Disposition of complaint; claimant; rejection; court action authorized; limitation.  
79-2,121. Complaint; failure of governing board to act; claimant's remedies.  
79-2,122. Violation; complaint; prerequisite to other remedy.  
79-2,123. Nebraska Fair Employment Practice Act; complaint; applicability.  
79-2,124. Act, how construed.

#### (m) STUDENT FEES

79-2,125. Act, how cited.  
79-2,126. Terms, defined.  
79-2,127. Student fees authorized.  
79-2,127.01. Donations authorized.  
79-2,128. Extracurricular activities; incidentals furnished by students; authorized.  
79-2,129. Nonspecialized attire furnished by students; authorized.  
79-2,130. Repealed. Laws 2003, LB 249, § 12.  
79-2,131. Musical instruments furnished by students; fee authorized; when.  
79-2,132. School store; authorized.  
79-2,133. Fee waiver policy.  
79-2,134. Student fee policy; hearing; procedure; contents.  
79-2,135. Student fee fund.

Section

(n) PART-TIME ENROLLMENT

79-2,136. Part-time enrollment; school board; duties; section, how construed.

(o) BULLYING PREVENTION AND EDUCATION

79-2,137. School district; development and adoption of bullying prevention and education policy; review.

(p) LINDSAY ANN BURKE ACT AND DATING VIOLENCE

79-2,138. Act, how cited.

79-2,139. Legislative findings and intent.

79-2,140. Terms, defined.

79-2,141. Model dating violence policy; department; school district; duties; publication; staff training; redress under other law.

79-2,142. School district; incorporate dating violence education.

(q) STATE SCHOOL SECURITY DIRECTOR

79-2,143. State school security director; appointment.

79-2,144. State school security director; duties.

79-2,145. Rules and regulations.

79-2,146. Suicide awareness and prevention training.

(a) COMPULSORY EDUCATION

**79-201 Compulsory education; attendance required; exceptions; reports required.**

(1) For purposes of this section, a child is of mandatory attendance age if the child (a) will reach six years of age prior to January 1 of the then-current school year and (b) has not reached eighteen years of age.

(2) Except as provided in subsection (3) of this section, every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child who is of mandatory attendance age or is enrolled in a public school shall cause such child to enroll in, if such child is not enrolled, and attend regularly a public, private, denominational, or parochial day school which meets the requirements for legal operation prescribed in Chapter 79, or a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements, each day that such school is open and in session, except when excused by school authorities or when illness or severe weather conditions make attendance impossible or impracticable.

(3) Subsection (2) of this section does not apply in the case of any child who:

(a) Has obtained a high school diploma by meeting the graduation requirements established in section 79-729;

(b) Has completed the program of instruction offered by a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements;

(c) Has reached sixteen years of age and has been withdrawn from school pursuant to section 79-202;

(d)(i) Will reach six years of age prior to January 1 of the then-current school year, but will not reach seven years of age prior to January 1 of such school year, (ii) such child's parent or guardian has signed an affidavit stating that the child is participating in an education program that the parent or guardian believes will prepare the child to enter grade one for the following school year, and (iii) such affidavit has been filed by the parent or guardian with the school district in which the child resides;

(e)(i) Will reach six years of age prior to January 1 of the then-current school year but has not reached seven years of age, (ii) such child's parent or guardian has signed an affidavit stating that the parent or guardian intends for the child to participate in a school which has elected or will elect pursuant to section 79-1601 not to meet accreditation or approval requirements and the parent or guardian intends to provide the Commissioner of Education with a statement pursuant to subsection (3) of section 79-1601 on or before the child's seventh birthday, and (iii) such affidavit has been filed by the parent or guardian with the school district in which the child resides; or

(f) Will not reach six years of age prior to January 1 of the then-current school year and such child was enrolled in a public school and has discontinued the enrollment according to the policy of the school board adopted pursuant to subsection (4) of this section.

(4) The board shall adopt policies allowing discontinuation of the enrollment of students who will not reach six years of age prior to January 1 of the then-current school year and specifying the procedures therefor.

(5) Each school district that is a member of a learning community shall report to the learning community coordinating council on or before September 1 of each year for the immediately preceding school year the following information:

(a) All reports of violations of this section made to the attendance officer of any school in the district pursuant to section 79-209;

(b) The results of all investigations conducted pursuant to section 79-209, including the attendance record that is the subject of the investigation and a list of services rendered in the case;

(c) The district's policy on excessive absenteeism; and

(d) Records of all notices served and reports filed pursuant to section 79-209 and the district's policy on habitual truancy.

**Source:** Laws 1901, c. 70, § 1, p. 454; Laws 1903, c. 95, § 1, p. 549; Laws 1905, c. 140, § 1, p. 575; Laws 1907, c. 131, § 1, p. 430; R.S.1913, § 6924; Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(a), p. 227; C.S.1922, § 6508a; Laws 1929, c. 87, § 1, p. 340; C.S.1929, § 79-1901; R.S.1943, § 79-1901; Laws 1949, c. 256, § 7, p. 692; Laws 1953, c. 291, § 1, p. 988; Laws 1959, c. 380, § 1, p. 1322; Laws 1971, LB 211, § 1; Laws 1971, LB 582, § 1; Laws 1984, LB 928, § 1; Laws 1984, LB 994, § 4; R.S.1943, (1994), § 79-201; Laws 1996, LB 900, § 5; Laws 1999, LB 152, § 1; Laws 2004, LB 868, § 1; Laws 2008, LB1154, § 6; Laws 2010, LB1071, § 2; Laws 2012, LB996, § 1.

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of section 43-247 and the status of truancy is subsequently terminated by the lawful execution of a parental release authorizing discontinuation of school pursuant to subsection (3)(d) of this section, a juvenile court may terminate its jurisdiction without a finding that such termination is in the best interests of the juvenile. *In re Interest of Kevin K.*, 274 Neb. 678, 742 N.W.2d 767 (2007).

The state, having a high responsibility for the education of its citizens, has the power to impose reasonable regulations for the control and duration of basic education. Parents have a right to send their children to private schools but do not have the right to be completely unfettered by reasonable government regulations as to the quality of the education furnished and the

maintenance of minimum standards. *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 207 Neb. 802, 301 N.W.2d 571 (1981).

Violation of this law is not, in itself, evidence of neglect under section 43-202(2)(c), R.R.S.1943. *State v. Rice*, 204 Neb. 732, 285 N.W.2d 223 (1979).

This section did not operate to violate constitutional right of parents to educate their children in accordance with the tenets of their religious faith. *Meyerkorth v. State*, 173 Neb. 889, 115 N.W.2d 585 (1962).

This section has no application to physically or mentally handicapped child attending special school. *Schutte v. Decker*, 164 Neb. 582, 83 N.W.2d 69 (1957).

**79-202 Compulsory attendance; withdrawal of child from school; exempt from mandatory attendance; exit interview; withdrawal form; validity; child at least sixteen years of age; other enrollment options; later enrollment; effect; Commissioner of Education; duties.**

(1) A person who has legal or actual charge or control of a child who is at least sixteen years of age but less than eighteen years of age may withdraw such child from school before graduation and be exempt from the mandatory attendance requirements of section 79-201 if an exit interview is conducted and the withdrawal form is signed as required by subsections (2) through (5) of this section for a child enrolled in a public, private, denominational, or parochial school or if a signed notarized release form is filed with the Commissioner of Education as required by subsection (6) of this section for a child enrolled in a school that elects pursuant to section 79-1601 not to meet accreditation or approval requirements.

(2) Upon the written request of any person who has legal or actual charge or control of a child who is at least sixteen years of age but less than eighteen years of age, the superintendent of a school district or the superintendent's designee shall conduct an exit interview if the child (a) is enrolled in a school operated by the school district or (b) resides in the school district and is enrolled in a private, denominational, or parochial school.

(3) The superintendent or the superintendent's designee shall set the time and place for the exit interview which shall be personally attended by: (a) The child, unless the withdrawal is being requested due to an illness of the child making attendance at the exit interview impossible or impracticable; (b) the person who has legal or actual charge or control of the child who requested the exit interview; (c) the superintendent or the superintendent's designee; (d) the child's principal or the principal's designee if the child at the time of the exit interview is enrolled in a school operated by the school district; and (e) any other person requested by any of the required parties who agrees to attend the exit interview and is available at the time designated for the exit interview which may include, but need not be limited to, other school district personnel or the child's principal or such principal's designee if the child is enrolled in a private, denominational, or parochial school.

(4) At the exit interview, the person making the written request pursuant to subsection (2) of this section shall present evidence that (a) the person has legal or actual charge or control of the child and (b) the child would be withdrawing due to either (i) financial hardships requiring the child to be employed to support the child's family or one or more dependents of the child or (ii) an illness of the child making attendance impossible or impracticable. The superintendent or superintendent's designee shall identify all known alternative educational opportunities, including vocational courses of study, that are available to the child in the school district and how withdrawing from school is likely to reduce potential future earnings for the child and increase the likelihood of the child being unemployed in the future. Any other relevant information may be presented and discussed by any of the parties in attendance.

(5)(a) At the conclusion of the exit interview, the person making the written request pursuant to subsection (2) of this section may sign the withdrawal form

provided by the school district agreeing to the withdrawal of the child or may rescind the written request for the withdrawal.

(b) Any withdrawal form signed by the person making the written request pursuant to subsection (2) of this section shall be valid only if (i) the child signs the form unless the withdrawal is being requested due to an illness of the child making attendance at the exit interview impossible or impracticable and (ii) the superintendent or superintendent's designee signs the form acknowledging that the interview was held, the required information was provided and discussed at the interview, and, in the opinion of the superintendent or the superintendent's designee, the person making the written request pursuant to subsection (2) of this section does in fact have legal or actual charge or control of the child and the child is experiencing either (A) financial hardships requiring the child to be employed to support the child's family or one or more dependents of the child or (B) an illness making attendance impossible or impracticable.

(6) A person who has legal or actual charge or control of the child who is at least sixteen years of age but less than eighteen years of age may withdraw such a child before graduation and be exempt from the mandatory attendance requirements of section 79-201 if such child has been enrolled in a school that elects pursuant to section 79-1601 not to meet the accreditation or approval requirements by filing with the State Department of Education a signed notarized release on a form prescribed by the Commissioner of Education.

(7) A child who has been withdrawn from school pursuant to this section may enroll in a school district at a later date as provided in section 79-215 or may enroll in a private, denominational, or parochial school or a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Any such enrollment shall void the withdrawal form previously entered, and the provisions of sections 79-201 to 79-210 shall apply to the child.

(8) The Commissioner of Education shall prescribe the required form for withdrawals pursuant to this section and determine and direct either that (a) withdrawal forms of school districts for any child who is withdrawn from school pursuant to this section and subdivision (3)(c) of section 79-201 shall be provided annually to the State Department of Education or (b) data regarding such students shall be collected under subsection (2) of section 79-528.

**Source:** Laws 2012, LB996, § 2.

### **79-203 Compulsory attendance; necessarily employed children; permit.**

In case the services or earnings of a child are necessary for his or her own support or the support of those actually dependent upon him or her and the child is fourteen years of age or more and not more than sixteen years of age and has completed the work of the eighth grade, the person having legal or actual charge of such child may apply to the superintendent of the primary high school district in which the child resides or a person designated in writing by the superintendent. The superintendent or designee may, in his or her discretion, issue a permit allowing such child to be employed.

**Source:** Laws 1921, c. 52, § 1(c), p. 227; C.S.1922, § 6508b; Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1905; Laws 1949, c. 256, § 11, p. 694; R.S.1943, (1994), § 79-205; Laws 1996, LB 900, § 7; Laws 1997, LB 347, § 3; Laws 1999, LB 272, § 24.

## Cross References

For provisions relating to child labor, see Chapter 48, article 3.

**79-204 Compulsory attendance; necessarily employed children; continuation schools; attendance required.**

All children who are fourteen years of age or more and not more than sixteen years of age, who reside in a school district in which a part-time continuation school is maintained by authority of the public school district and who are granted permits to be employed under section 79-203, shall attend a public, private, denominational, or parochial part-time continuation school eight hours of each week during the entire school year.

**Source:** Laws 1921, c. 53, § 1(c), p. 227; C.S.1922, § 6508b; Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1906; Laws 1949, c. 256, § 12, p. 694; R.S.1943, (1994), § 79-206; Laws 1996, LB 900, § 8.

**79-205 Compulsory attendance; record of attendance; annual attendance reports; made where.**

Each teacher in the public, private, denominational, and parochial schools of this state shall keep a record showing (1) the name, age, and address of each child enrolled, (2) the number and county of the school district in which the school is located, (3) the number of days each pupil was present and the number of days absent, and (4) the cause of absence. On the third day on which the public, private, denominational, and parochial schools are in session at the beginning of each school year, each teacher shall send to the superintendent or administrator of the school a list of the pupils enrolled in his or her school with the age, grade, and address of each.

**Source:** Laws 1901, c. 70, § 1, p. 454; Laws 1903, c. 95, § 1, p. 549; Laws 1905, c. 140, § 1, p. 575; Laws 1907, c. 131, § 1, p. 430; R.S.1913, § 6924; Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(f), p. 228; C.S.1922, § 6508d; C.S.1929, § 79-1904; R.S. 1943, § 79-1911; Laws 1949, c. 256, § 13, p. 694; Laws 1971, LB 210, § 2; R.S.1943, (1994), § 79-207; Laws 1996, LB 900, § 9; Laws 1999, LB 272, § 25.

The state, having a high responsibility for the education of its citizens, has the power to impose reasonable regulations for the control and duration of basic education. Parents have a right to send their children to private schools but do not have the right to be completely unfettered by reasonable government regula-

tions as to the quality of the education furnished and the maintenance of minimum standards. State ex rel. Douglas v. Faith Baptist Church of Louisville, 207 Neb. 802, 301 N.W.2d 571 (1981).

**79-206 Compulsory attendance; nonattendance lists; transmission to enforcement officers.**

Each superintendent or administrator of a school district, upon the receipt of the list specified in section 79-205, shall (1) compare the names of the children enrolled with the last census report on file in his or her office from such district, (2) prepare a list of all children resident in such district under his or her jurisdiction who are not attending school as provided in section 79-201, and (3) transmit the list to the officer or officers in such district whose duty it is to enforce the provisions of such section.

**Source:** Laws 1901, c. 70, § 1, p. 454; Laws 1903, c. 95, § 1, p. 549; Laws 1905, c. 140, § 1, p. 575; Laws 1907, c. 131, § 1, p. 430;

R.S.1913, § 6924; Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(f), p. 228; C.S.1922, § 6508d; C.S.1929, § 79-1904; R.S. 1943, § 79-1911; Laws 1949, c. 256, § 14, p. 694; R.S.1943, (1994), § 79-208; Laws 1996, LB 900, § 10; Laws 1999, LB 272, § 26.

**79-207 Compulsory attendance; entry or withdrawal of student; teachers' attendance reports.**

Whenever any child enters or withdraws from any school after the third day in which school is in session, the teacher shall transmit at once the name of such child to the superintendent as specified in section 79-206 and the superintendent shall use such information in whatever way he or she deems necessary for the purpose of enforcing section 79-201. At the end of each week each teacher shall report all absences and the cause of absence to the proper superintendent. At the close of each period each teacher shall transmit to the superintendent a report showing (1) the name, age, and address of each child enrolled, (2) the number of half days each child was absent, (3) the number enrolled and the number attending on the last day of the period, and (4) the average daily attendance for the period. The provisions of this section requiring reports from each teacher shall not apply to individual teachers in schools employing more than one teacher but shall in such case apply to the head teacher, principal, or superintendent who shall obtain the required information from the teachers under his or her supervision or control. All reports and lists required in this section shall be upon blanks prescribed by the State Department of Education.

**Source:** Laws 1921, c. 53, § 1(g), p. 229; C.S.1922, § 6508e; C.S.1929, § 79-1905; R.S.1943, § 79-1912; Laws 1949, c. 256, § 15, p. 695; Laws 1959, c. 382, § 1, p. 1324; R.S.1943, (1994), § 79-209; Laws 1996, LB 900, § 11.

**79-208 Compulsory attendance; attendance officers; powers and duties; compensation.**

School boards shall appoint one or more attendance officers who shall be vested with police powers and shall enforce the provisions of section 79-201 in the school districts for which they act. Attendance officers shall be compensated for their services in such sums as are determined by the school board, to be paid out of the general school fund of the district.

**Source:** Laws 1901, c. 70, § 2, p. 456; Laws 1903, c. 95, § 2, p. 552; Laws 1905, c. 141, § 1, p. 578; Laws 1909, c. 130, § 1, p. 474; R.S.1913, § 6925; Laws 1919, c. 155, § 9, p. 350; Laws 1921, c. 53, § 2, p. 231; C.S.1922, § 6509; C.S.1929, § 79-1914; R.S.1943, § 79-1921; Laws 1949, c. 256, § 16, p. 695; R.S.1943, (1994), § 79-210; Laws 1996, LB 900, § 12; Laws 1999, LB 272, § 27.

**Cross References**

For provisions for attendance officers reporting illegal employment to Department of Labor and county attorneys, see section 48-312.

**79-209 Compulsory attendance; nonattendance; school district; duties; collaborative plan; considerations; referral to county attorney; notice.**

(1) In all school districts in this state, any superintendent, principal, teacher, or member of the school board who knows of any violation of subsection (2) of section 79-201 shall within three days report such violation to the attendance officer of the school, who shall immediately investigate the case. When of his or her personal knowledge or by report or complaint from any resident of the district, the attendance officer believes that there is a violation of subsection (2) of section 79-201, the attendance officer shall immediately investigate such alleged violation.

(2) All school boards shall have a written policy on attendance developed and annually reviewed in collaboration with the county attorney of the county in which the principal office of the school district is located. The policy shall include a provision indicating how the school district will handle cases in which excessive absences are due to illness. The policy shall also state the circumstances and number of absences or the hourly equivalent upon which the school shall render all services to address barriers to attendance. Such services shall include, but not be limited to:

(a) Verbal or written communication by school officials with the person or persons who have legal or actual charge or control of any child; and

(b) One or more meetings between, at a minimum, a school attendance officer, a school social worker, or a school administrator or his or her designee, the person who has legal or actual charge or control of the child, and the child, when appropriate, to attempt to address the barriers to attendance. The result of the meeting or meetings shall be to develop a collaborative plan to reduce barriers identified to improve regular attendance. The plan shall consider, but not be limited to:

(i) Illness related to physical or behavioral health of the child;

(ii) Educational counseling;

(iii) Educational evaluation;

(iv) Referral to community agencies for economic services;

(v) Family or individual counseling; and

(vi) Assisting the family in working with other community services.

(3) The school may report to the county attorney of the county in which the person resides when the school has documented the efforts it has made as required by subsection (2) of this section that the collaborative plan to reduce barriers identified to improve regular attendance has not been successful and that the child has been absent more than twenty days per year. The school shall notify the child's family in writing prior to referring the child to the county attorney. Failure by the school to document the efforts required by subsection (2) of this section is a defense to prosecution under section 79-201 and adjudication for educational neglect under subdivision (3)(a) of section 43-247 and habitual truancy under subdivision (3)(b) of section 43-247. Illness that makes attendance impossible or impracticable shall not be the basis for referral to the county attorney.

(4) Nothing in this section shall preclude a county attorney from being involved at any stage in the process to address excessive absenteeism.

**Source:** Laws 1901, c. 70, § 2, p. 456; Laws 1903, c. 95, § 2, p. 552; Laws 1905, c. 141, § 1, p. 578; Laws 1909, c. 130, § 1, p. 474; R.S.1913, § 6925; Laws 1919, c. 155, § 9, p. 350; Laws 1921, c. 53, § 2, p. 231; C.S.1922, § 6509; C.S.1929, § 79-1914; R.S.1943,

§ 79-1922; Laws 1949, c. 256, § 17, p. 696; Laws 1986, LB 528, § 8; Laws 1994, LB 1250, § 5; R.S.1943, (1994), § 79-211; Laws 1996, LB 900, § 13; Laws 1998, Spec. Sess., LB 1, § 6; Laws 1999, LB 272, § 28; Laws 2010, LB800, § 35; Laws 2011, LB463, § 19; Laws 2012, LB933, § 1; Laws 2014, LB464, § 34.  
Operative date July 18, 2014.

### **79-210 Violations; penalty.**

Any person violating the provisions of sections 79-201 to 79-209 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1951, c. 276, § 1, p. 928; Laws 1977, LB 39, § 247; R.S.1943, (1994), § 79-216; Laws 1996, LB 900, § 14.

The fact that conduct is subject to the criminal penalties under these sections does not proscribe granting of injunctive relief. *State ex rel. Douglas v. Bigelow*, 214 Neb. 464, 334 N.W.2d 444 (1983).

The provision for penal sanctions in the event of violations of the various statutory provisions relating to compulsory edu-

cation and operation of private, denominational, and parochial schools does not foreclose the possibility of injunctive relief. *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 207 Neb. 802, 301 N.W.2d 571 (1981).

## (b) MINIMUM SCHOOL TERM

### **79-211 Minimum school term.**

The school term shall not be less than (1) one thousand thirty-two instructional hours for elementary grades and (2) one thousand eighty instructional hours for high school grades in any public school district or private, denominational, or parochial school. If any district which receives twenty percent or more of its total receipts for general fund purposes from federal sources fails to actually receive receipts anticipated at the time of the adoption of the school budget from taxes, state funds, federal funds, tuition, or other sources, the school board or board of education of such district may, at any time during the school year, elect to close all or part of its schools.

**Source:** Laws 1996, LB 900, § 15.

### **79-212 Kindergarten program; minimum hours.**

The school board or board of education of any school district offering a kindergarten program shall provide a program of at least four hundred clock hours each school year.

**Source:** Laws 1967, c. 520, § 1, p. 1742; Laws 1977, LB 430, § 1; Laws 1978, LB 596, § 2; R.S.1943, (1981), § 79-549; Laws 1985, LB 633, § 4; R.S.1943, (1994), § 79-201.10; Laws 1996, LB 900, § 16.

#### **Cross References**

**Kindergarten**, program required, when, see section 79-728.

### **79-213 School; failure to maintain; loss of state funds; exceptions.**

No school district shall receive any portion of state funds pursuant to the Tax Equity and Educational Opportunities Support Act unless school has been actually taught in the district by a legally certificated teacher for the length of time required by law or unless the pupils residing in the district have attended school in another district for the length of time required by law. At the discretion of the State Board of Education, the closing of a school shall not

prevent a district from being accredited or receiving its proper share of state funds when epidemic sickness or severe storm conditions prevail to such an extent that the school board in any district deems it advisable to close any or all schools within the district or when the destruction of the schoolhouse makes it impossible to continue the school. Such sickness, storm conditions, or destruction of the schoolhouse shall be sworn to by the secretary of the school board and the oath filed with the State Board of Education if the school board of the school district is proposing to offer fewer hours than required by law.

**Source:** Laws 1881, c. 78, subdivision II, § 14, p. 341; Laws 1883, c. 72, § 3, p. 290; Laws 1889, c. 78, § 7, p. 544; Laws 1903, c. 85, § 2, p. 535; Laws 1913, c. 57, § 1, p. 168; R.S.1913, § 6745; Laws 1915, c. 116, § 1, p. 266; C.S.1922, § 6286; Laws 1927, c. 87, § 1, p. 255; C.S.1929, § 79-218; Laws 1933, c. 138, § 1, p. 545; Laws 1935, c. 168, § 1, p. 619; Laws 1939, c. 113, § 1, p. 488; C.S.Supp.,1941, § 79-218; R.S.1943, § 79-224; Laws 1949, c. 256, § 109, p. 728; Laws 1971, LB 227, § 1; Laws 1990, LB 1090, § 8; Laws 1990, LB 1059, § 37; R.S.1943, (1994), § 79-470; Laws 1996, LB 900, § 17; Laws 1998, Spec. Sess., LB 1, § 7.

#### Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

### (c) ADMISSION REQUIREMENTS

**79-214 Admission of children; kindergarten; age; evidence of physical examination; visual evaluation; when; exception.**

(1)(a) Except as provided in subdivision (1)(b) of this section, the school board of any school district shall not admit any child into the kindergarten of any school of such school district unless such child has reached the age of five years on or before July 31 of the calendar year in which the school year for which the child is seeking admission begins.

(b) The board shall admit a child who will reach the age of five years on or after August 1 and on or before October 15 of such school year if the parent or guardian requests such entrance and provides an affidavit stating that (i) the child attended kindergarten in another jurisdiction in the current school year, (ii) the family anticipates relocation to another jurisdiction that would allow admission within the current year, or (iii) the child is capable of carrying the work of kindergarten which can be demonstrated through a recognized assessment procedure approved by the board. Each school board shall, for purposes of this subdivision, approve and make available a recognized assessment procedure for determining if a child is capable of carrying the work of kindergarten. The school board shall update approved procedures as the board deems appropriate.

(2) The board shall comply with the requirements of subsection (2) of section 43-2007 and shall require evidence of: (a) A physical examination by a physician, a physician assistant, or an advanced practice registered nurse, practicing under and in accordance with his or her respective certification act, within six months prior to the entrance of a child into the beginner grade and the seventh grade or, in the case of a transfer from out of state, to any other grade of the local school; and (b) a visual evaluation by a physician, a physician assistant, an advanced practice registered nurse, or an optometrist within six months prior

to the entrance of a child into the beginner grade or, in the case of a transfer from out of state, to any other grade of the local school, which consists of testing for amblyopia, strabismus, and internal and external eye health, with testing sufficient to determine visual acuity, except that no such physical examination or visual evaluation shall be required of any child whose parent or guardian objects in writing. The cost of such physical examination and visual evaluation shall be borne by the parent or guardian of each child who is examined.

**Source:** Laws 1931, c. 139, § 1, p. 385; C.S.Supp.,1941, § 79-412; R.S. 1943, § 79-414; Laws 1949, c. 258, § 1, p. 869; Laws 1949, c. 256, § 83, p. 720; Laws 1965, c. 519, § 1, p. 1644; Laws 1967, c. 532, § 1, p. 1766; Laws 1973, LB 403, § 20; Laws 1979, LB 59, § 1; Laws 1986, LB 68, § 2; Laws 1987, LB 367, § 66; Laws 1988, LB 1013, § 4; Laws 1991, LB 836, § 33; Laws 1993, LB 348, § 18; Laws 1995, LB 214, § 1; Laws 1995, LB 401, § 42; R.S.Supp.,1995, § 79-444; Laws 1996, LB 900, § 18; Laws 1998, LB 1229, § 2; Laws 2000, LB 1115, § 87; Laws 2001, LB 797, § 4; Laws 2005, LB 114, § 1; Laws 2005, LB 256, § 96; Laws 2010, LB1006, § 2; Laws 2013, LB410, § 2.

This section deals with the subject of minimum age requirements at which pupils may enter kindergarten and first grade. State ex rel. Shineman v. Board of Education, 152 Neb. 644, 42 N.W.2d 168 (1950).

### **79-215 Students; admission; tuition; persons exempt; department; duties.**

(1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge.

(2) A school board shall admit a student upon request without charge if at least one of the student's parents resides in the school district.

(3) A school board shall admit any homeless student upon request without charge.

(4) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(5) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.

(6) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(7) A school board of any school district that is a member of a learning community shall admit nonresident students to the school district pursuant to the open enrollment provisions of a diversity plan in a learning community as authorized by section 79-2110, and such admission shall be without charge.

(8) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board.

(9) When a student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a

foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 shall be deemed a resident of the district in which he or she resided at the time he or she became a foster child, unless it is determined under section 43-1311 or 43-1312 that he or she will not attend such district in which case he or she shall be deemed a resident of the district in which the foster family home or foster home is located.

(10)(a) When a student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established pursuant to the Medical Assistance Act and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(b) If a student is residing in a residential setting as described in subdivision (10)(a) of this section and such residential setting does not maintain an interim-program school as defined in section 79-1119.01 or an approved or accredited school, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services and support services as defined in section 79-1125.01, unless a parent or guardian and the resident school district agree that an appropriate education will be provided by the resident school district while the student is residing in such residential setting. If the resident school district is required to contract, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into, all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located.

(c) If a student is residing in a residential setting as described in subdivision (10)(a) of this section and such residential setting maintains an interim-program school as defined in section 79-1119.01 or an approved or accredited school, the department shall reimburse such residential setting for the provision of all educational services, including all special education services and support services, with the amount of payment for all educational services determined pursuant to the average per pupil cost of the service agency as defined in section 79-1116. The resident school district shall retain responsibility for such student's individualized education plan, if any. The educational services may be provided through (i) such interim-program school or approved or accredited school, (ii) a contract between the residential setting and the school district in which such residential setting is located, (iii) a contract between the residential setting and another service agency as defined in section 79-1124, or (iv) a combination of such educational service providers.

(d) If a school district pays a school district in which a residential setting is located for educational services provided pursuant to subdivision (10)(b) of this section and it is later determined that a different school district was the resident school district for such student at the time such educational services were provided, the school district that was later determined to be the resident school district shall reimburse the school district that initially paid for the educational services one hundred ten percent of the amount paid.

(e) A student residing in a residential setting described in this subsection shall be defined as a student with a handicap pursuant to Article VII, section 11, of the Constitution of Nebraska, and as such the state and any political subdivision may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide the educational services to the student if such educational services are nonsectarian in nature.

(11) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(12) No tuition shall be charged for students who may be by law allowed to attend the school without charge.

(13) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of a student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a telephone number and address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

(14) The department may adopt and promulgate rules and regulations to carry out the department’s responsibilities under this section.

**Source:** Laws 1881, c. 78, subdivision V, § 4, p. 352; Laws 1883, c. 72, § 11, p. 293; Laws 1901, c. 63, § 10, p. 440; R.S.1913, § 6784; Laws 1921, c. 64, § 1, p. 250; C.S.1922, § 6325; Laws 1927, c. 88, § 1, p. 257; C.S.1929, § 79-504; R.S.1943, § 79-504; Laws 1947, c. 273, § 1, p. 877; Laws 1949, c. 256, § 84, p. 720; Laws 1972, LB 1219, § 1; Laws 1974, LB 43, § 1; Laws 1979, LB 128, § 1; Laws 1980, LB 770, § 1; Laws 1980, LB 839, § 1; Laws 1982, LB 642, § 1; Laws 1984, LB 286, § 1; Laws 1984, LB 768, § 1; Laws 1985, LB 592, § 1; Laws 1985, LB 725, § 1; Laws 1991, LB 511, § 29; Laws 1992, LB 245, § 34; Laws 1992, Third Spec. Sess., LB 3, § 1; Laws 1994, LB 858, § 5; R.S.1943, (1994), § 79-445; Laws 1996, LB 900, § 19; Laws 1996, LB 1044, § 814; Laws 1997, LB 307, § 212; Laws 2000, LB 1243, § 2; Laws 2001, LB 797, § 5; Laws 2002, LB 1105, § 503; Laws 2006, LB 1248, § 87; Laws 2008, LB1014, § 68; Laws 2010, LB1071, § 3; Laws 2010, LB1087, § 1.

**Cross References**

**Medical Assistance Act**, see section 68-901.

The permissive language in subsection (8) of this section pertaining to a “request by a parent or legal guardian” does not affect a student’s residency determination and does not narrow the scope of the section to the minor students only. *Jefferson Cty. Bd. of Ed. v. York Cty. Bd. of Ed.*, 270 Neb. 407, 703 N.W.2d 257 (2005).

Pursuant to subsection (2) (now subsection (7)) of this section, the unambiguous language of this section obligates the state to pay the cost of both regular and special education received by state wards placed in Boys Town schools. Subsection (2) of this section does not violate Neb. Const. Art. VII, section 11. *Father Flanagan’s Boys Home v. Dept. of Soc. Servs.*, 255 Neb. 303, 583 N.W.2d 774 (1998).

Domicile of child normally follows that of parent who has custody by virtue of decree of divorce. *State ex rel. Frasier v. Whaley*, 194 Neb. 703, 234 N.W.2d 909 (1975).

Cited in determining whether tuition had been paid for two or more consecutive years. *Pischel v. Kreycik*, 184 Neb. 332, 167 N.W.2d 388 (1969).

Agreement on part of parents to pay high school tuition will not be implied. *School District No. 15 of Furnas County v. Wilson*, 101 Neb. 683, 164 N.W. 709 (1917).

Nonresident pupil must pay tuition. *State ex rel. Vale v. School Dist. of City of Superior*, 55 Neb. 317, 75 N.W. 855 (1898).

Child, for school purposes, may have separate residence from parent. *Mizner v. School Dist. No. 11 of Sherman County*, 2 Neb. Unof. 238, 96 N.W. 128 (1901).

**79-216 Children of members in military service; children of parents employed by federal government and living on national parks; admission discretionary; when exempt from tuition.**

In all cases when any officer or enlisted member of the United States Army, Navy, Marine Corps, or Air Force is on active duty in the State of Nebraska and is residing on property acquired by the United States pursuant to Chapter 72, article 6, prior to the repeal of such article by Laws 1969, Chapter 593, the children of any such officer or enlisted member who are of school age may be admitted to any of the public schools in any school district, in, near, or adjacent to the place where such officer or enlisted member is stationed so long as such officer or enlisted member is on active duty in Nebraska, and such children may be admitted to the public schools of any such district without payment of tuition.

This section also applies to children of parents employed by the federal government and residing with their parents on national parks or national monuments within this state.

**Source:** Laws 1937, c. 185, § 1, p. 742; C.S.Supp.,1941, § 79-521; R.S. 1943, § 79-518; Laws 1949, c. 256, § 85, p. 721; Laws 1959, c.

390, § 1, p. 1345; Laws 1967, c. 533, § 1, p. 1767; Laws 1971, LB 292, § 9; Laws 1993, LB 839, § 4; R.S.1943, (1994), § 79-446; Laws 1996, LB 900, § 20.

Military personnel living off and on air base are part of population of county. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

**79-217 School board and governing authority; student; immunization against certain contagious diseases; exception.**

(1) Except as provided in sections 79-221 and 79-222, the school board or board of education of each school district and the governing authority of each private, denominational, or parochial school in this state shall require each student to be protected against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, and tetanus by immunization prior to enrollment. Any student who does not comply with this section shall not be permitted to continue in school until he or she so complies, except as provided by section 79-222. Each school district shall make diligent efforts to inform families prior to the date of school registration of the immunization requirements of this section.

(2) Except as provided in sections 79-221 and 79-222, on and after July 1, 2010, every student entering the seventh grade shall have a booster immunization containing diphtheria and tetanus toxoids and an acellular pertussis vaccine which meets the standards approved by the United States Public Health Service for such biological products, as such standards existed on January 1, 2009.

(3) Except as provided in the Childhood Vaccine Act, the cost of such immunizations shall be borne by the parent or guardian of each student who is immunized or by the Department of Health and Human Services for those students whose parent or guardian is financially unable to meet such cost.

**Source:** Laws 1973, LB 173, § 1; Laws 1973, LB 546, § 1; Laws 1979, LB 59, § 2; Laws 1992, LB 431, § 8; Laws 1993, LB 536, § 109; Laws 1994, LB 1223, § 128; R.S.1943, (1994), § 79-444.01; Laws 1996, LB 900, § 21; Laws 1996, LB 1044, § 811; Laws 2005, LB 301, § 63; Laws 2007, LB296, § 707; Laws 2009, LB464, § 1.

**Cross References**

**Childhood Vaccine Act**, see section 71-526.

An unimmunized student's right to attend school on presentation of a properly signed immunization waiver is limited by a school board's authority, under former section 79-4,177(1), to

exclude the unimmunized student from school during presence of a disease specified by this section. Maack v. School Dist. of Lincoln, 241 Neb. 847, 491 N.W.2d 341 (1992).

**79-218 School board and governing authority; immunization clinics; request assistance.**

Any school board or board of education of a school district or the governing authority of a private, denominational, or parochial school in this state may request assistance from the Department of Health and Human Services in establishing immunization clinics. Such assistance shall consist of vaccines, serums, and other supplies, services, and guidance from the Department of Health and Human Services.

**Source:** Laws 1973, LB 173, § 2; R.S.1943, (1994), § 79-444.02; Laws 1996, LB 900, § 22; Laws 1996, LB 1044, § 812; Laws 2005, LB 301, § 64; Laws 2007, LB296, § 708.

**79-219 Student; immunization status; Department of Health and Human Services; rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations relating to the required levels of protection, provisional enrollment under the provisions of section 79-222, the evidence necessary to prove that the required examination or immunization has been received, and the reporting of each student's immunization status. The department may modify, add to, or delete from the list of required immunizations set out in section 79-217. The department shall furnish local school authorities with copies of such rules and regulations and any other material which will assist in the carrying out of sections 79-214 and 79-217 to 79-223.

**Source:** Laws 1979, LB 59, § 3; Laws 1994, LB 1223, § 129; R.S.1943, (1994), § 79-444.03; Laws 1996, LB 900, § 23; Laws 1996, LB 1044, § 813; Laws 1998, LB 1073, § 159; Laws 2005, LB 301, § 65; Laws 2007, LB296, § 709.

**79-220 Child; physical examination; visual evaluation; immunization; right of refusal.**

At the time the parent or guardian of any child is notified that such child must have a physical examination and a visual evaluation pursuant to section 79-214 or immunizations pursuant to section 79-217, the parent or guardian shall also be notified in writing of (1) his or her right to submit a written statement refusing a physical examination, a visual evaluation, or immunization for his or her child and (2) a telephone number or other contact information to assist the parent or guardian in receiving information regarding free or reduced-cost visual evaluations for low-income families who qualify.

**Source:** Laws 1979, LB 59, § 4; R.S.1943, (1994), § 79-444.04; Laws 1996, LB 900, § 24; Laws 2005, LB 114, § 2.

**79-221 Immunization; when not required.**

Immunization shall not be required for a student's enrollment in any school in this state if he or she submits to the admitting official either of the following:

(1) A statement signed by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her respective certification act, stating that, in the health care provider's opinion, the immunizations required would be injurious to the health and well-being of the student or any member of the student's family or household; or

(2) An affidavit signed by the student or, if he or she is a minor, by a legally authorized representative of the student, stating that the immunization conflicts with the tenets and practice of a recognized religious denomination of which the student is an adherent or member or that immunization conflicts with the personal and sincerely followed religious beliefs of the student.

**Source:** Laws 1993, LB 536, § 110; Laws 1995, LB 214, § 2; R.S.Supp.,1995, § 79-444.06; Laws 1996, LB 900, § 25; Laws 2000, LB 1115, § 88; Laws 2005, LB 256, § 97.

**79-222 Immunizations; provisional enrollment; conditions.**

(1) A student may be provisionally enrolled in a school in Nebraska if he or she meets either of the following qualifications:

(a) The student has begun the immunizations required under section 79-217 and is receiving the necessary immunizations as rapidly as is medically feasible; or

(b) The student is the child or legal ward of an officer or enlisted person on active duty in any branch of the military services of the United States or of his or her spouse, enrolling in a Nebraska school following residence in another state or in a foreign country.

(2) As a condition for the provisional enrollment of a student qualified for such enrollment under subdivision (1)(b) of this section, a parent or adult legal guardian of the student shall provide the school with a signed written statement certifying that the student has completed the course of immunizations required by section 79-217.

(3) The provisional enrollment of a student qualified for such enrollment under subdivision (1)(b) of this section shall not continue beyond sixty days from the date of such enrollment. At such time the school shall be provided, with regard to the student, written evidence of compliance with section 79-217. The student shall not be permitted to continue in school until such evidence of compliance is provided.

**Source:** Laws 1993, LB 536, § 111; Laws 1994, LB 1223, § 130; R.S.1943, (1994), § 79-444.07; Laws 1996, LB 900, § 26.

#### **79-223 Violations; penalty.**

Any person violating the provisions of section 79-214, 79-217, 79-219, or 79-220 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1979, LB 59, § 5; R.S.1943, (1994), § 79-444.05; Laws 1996, LB 900, § 27.

#### (d) HEALTH CARE

#### **79-224 Asthma or anaphylaxis condition; self-management by student; conditions; request; authorization.**

(1) An approved or accredited public, private, denominational, or parochial school shall allow a student with asthma or anaphylaxis to self-manage his or her asthma or anaphylaxis condition upon written request of the student's parent or guardian and authorization of the student's physician, upon receipt of a signed statement under subsection (5) of this section, and pursuant to an asthma or anaphylaxis medical management plan developed under subsection (2) of this section.

(2) Upon receipt of a written request and authorization under subsection (1) of this section, the school and the parent or guardian, in consultation with the student's physician, shall develop an asthma or anaphylaxis medical management plan for the student for the current school year. Such plan shall (a) identify the health care services the student may receive at school relating to such condition, (b) evaluate the student's understanding of and ability to self-manage his or her asthma or anaphylaxis condition, (c) permit regular monitoring of the student's self-management of his or her asthma or anaphylaxis condition by an appropriately credentialed health care professional, (d) include the name, purpose, and dosage of the prescription asthma or anaphylaxis medication prescribed for such student, (e) include procedures for storage and

access to backup supplies of such prescription asthma or anaphylaxis medication, and (f) be signed by the student's parent or guardian and the physician responsible for treatment of the student's asthma or anaphylaxis condition. The school may consult with a registered nurse or other health care professional employed by such school during development of the plan. The plan and the signed statement required by subsection (5) of this section shall be kept on file at the school where the student is enrolled.

(3) Pursuant to the asthma or anaphylaxis medical management plan developed under subsection (2) of this section, a student with asthma or anaphylaxis shall be permitted to self-manage his or her asthma or anaphylaxis condition in the classroom or any part of the school or on school grounds, during any school-related activity, or in any private location specified in the plan. The student for whom an asthma or anaphylaxis medical management plan has been developed under this section shall promptly notify the school nurse, such nurse's designee, or another designated adult at the school when such student has self-administered prescription asthma or anaphylaxis medication pursuant to such plan.

(4)(a) If a student for whom an asthma or anaphylaxis medical management plan has been developed under this section uses his or her prescription asthma or anaphylaxis medication other than as prescribed, he or she may be subject to disciplinary action by the school, except that such disciplinary action shall not include a limitation or restriction on the student's access to such medication. The school shall promptly notify the parent or guardian of any disciplinary action imposed.

(b) If a student for whom an asthma or anaphylaxis medical management plan has been developed under this section injures school personnel or another student as the result of the misuse of prescription asthma or anaphylaxis medication or related medical supplies, the parent or guardian of the student for whom such plan has been developed shall be responsible for any and all costs associated with such injury.

(5) The parent or guardian of a student for whom an asthma or anaphylaxis medical management plan has been developed under this section shall sign a statement acknowledging that (a) the school and its employees and agents are not liable for any injury or death arising from a student's self-management of his or her asthma or anaphylaxis condition and (b) the parent or guardian shall indemnify and hold harmless the school and its employees and agents against any claim arising from a student's self-management of his or her asthma or anaphylaxis condition.

**Source:** Laws 2006, LB 1148, § 1.

**79-225 Diabetic condition; self-management by student; conditions; request; authorization.**

(1) An approved or accredited public, private, denominational, or parochial school shall allow a student with diabetes to self-manage his or her diabetic condition upon written request of the student's parent or guardian and authorization of the student's physician, upon receipt of a signed statement under subsection (5) of this section, and pursuant to a diabetes medical management plan developed under subsection (2) of this section.

(2) Upon receipt of a written request and authorization under subsection (1) of this section, the school and the parent or guardian, in consultation with the

student's physician, shall develop a diabetes medical management plan for the student for the current school year. The plan shall (a) identify the health care services the student may receive at school relating to such condition, (b) evaluate the student's understanding of and ability to self-manage his or her diabetic condition, (c) permit regular monitoring of the student's self-management of his or her diabetic condition by an appropriately credentialed health care professional, and (d) be signed by the student's parent or guardian and the physician responsible for treatment of the student's diabetic condition. The school may consult with a registered nurse or other health care professional employed by such school during development of the plan. The plan and the signed statement required by subsection (5) of this section shall be kept on file at the school where the student is enrolled.

(3) Pursuant to the diabetes medical management plan developed under subsection (2) of this section, a student with a diabetic condition shall be permitted to self-manage his or her diabetic condition in the classroom or any part of the school or on school grounds during any school-related activity or in any private location specified in the plan.

(4)(a) A school may prohibit a student from possessing the necessary medical supplies to self-manage his or her diabetic condition or place other necessary and appropriate restrictions or conditions on the student's self-management of his or her diabetic condition if the school determines that the student has endangered himself, herself, or others through the misuse or threatened misuse of such medical supplies. The school shall promptly notify the parent or guardian of any prohibition, restriction, or condition imposed.

(b) If a student for whom a diabetes medical management plan has been developed under this section injures school personnel or another student as the result of the misuse of necessary diabetic medical supplies, the parent or guardian of the student for whom such plan has been developed shall be responsible for any and all costs associated with such injury.

(5) The parent or guardian of a student for whom a diabetes medical management plan has been developed under this section shall sign a statement acknowledging that (a) the school and its employees and agents are not liable for any injury or death arising from a student's self-management of his or her diabetic condition and (b) the parent or guardian shall indemnify and hold harmless the school and its employees and agents against a claim arising from a student's self-management of his or her diabetic condition.

**Source:** Laws 2006, LB 1107, § 1.

**79-226 Repealed. Laws 1997, LB 347, § 59.**

**79-227 Repealed. Laws 1997, LB 347, § 59.**

**79-228 Repealed. Laws 1997, LB 347, § 59.**

**79-229 Repealed. Laws 1997, LB 347, § 59.**

**79-230 Repealed. Laws 1997, LB 347, § 59.**

**79-231 Repealed. Laws 1997, LB 347, § 59.**

## (e) ENROLLMENT OPTION PROGRAM

**79-232 Legislative findings.**

The Legislature finds and declares that parents and legal guardians have the primary responsibility of ensuring that their children receive the best education possible. In recognition of this responsibility, the Legislature intends to provide educational options for parents and legal guardians, when deciding what public school or public school district is best for their children, by allowing them to consider the following factors, including, but not limited to:

- (1) The size of the schools and school districts in the area;
- (2) The distance children have to travel and the ease and availability of transportation;
- (3) The course offerings and extracurricular offerings of the schools and school districts in the area;
- (4) The quantity and quality of the staff at such schools and school districts; and
- (5) The performance of the school district on any indicators of performance established by the State Department of Education.

**Source:** Laws 1989, LB 183, § 1; Laws 1994, LB 930, § 1; R.S.1943, (1994), § 79-3401; Laws 1996, LB 900, § 36; Laws 2006, LB 1024, § 17.

**79-233 Terms, defined.**

For purposes of sections 79-232 to 79-246:

- (1) Enrollment option program means the program established in section 79-234;
- (2) Option school district means the public school district that an option student chooses to attend instead of his or her resident school district;
- (3) Option student means a student that has chosen to attend an option school district, including a student who resides in a learning community and began attendance as an option student in an option school district in such learning community prior to the end of the first full school year for which the option school district will be a member of such learning community, but not including a student who resides in a learning community and who attends pursuant to section 79-2110 another school district in such learning community;
- (4) Resident school district means the public school district in which a student resides or the school district in which the student is admitted as a resident of the school district pursuant to section 79-215; and
- (5) Siblings means all children residing in the same household on a permanent basis who have the same mother or father or who are stepbrother or stepsister to each other.

**Source:** Laws 1989, LB 183, § 2; Laws 1990, LB 843, § 3; Laws 1992, LB 1001, § 36; R.S.1943, (1994), § 79-3402; Laws 1996, LB 900, § 37; Laws 1997, LB 347, § 4; Laws 2006, LB 1024, § 18; Laws 2008, LB988, § 3; Laws 2009, LB62, § 1; Laws 2009, LB549, § 4.

**79-234 Enrollment option program; established; limitations.**

(1) An enrollment option program is hereby established to enable any kindergarten through twelfth grade Nebraska student to attend a school in a Nebraska public school district in which the student does not reside subject to the limitations prescribed in section 79-238. The option shall be available only once to each student prior to graduation, except that the option does not count toward such limitation if such option meets, or met at the time of the option, one of the following criteria: (a) The student relocates to a different resident school district, (b) the option school district merges with another district, (c) the option school district is a Class I district, (d) the student will have completed either the grades offered in the school building originally attended in the option school district or the grades immediately preceding the lowest grade offered in the school building for which a new option is sought, (e) the option would allow the student to continue current enrollment in a school district, or (f) the option would allow the student to enroll in a school district in which the student was previously enrolled as a resident student. Sections 79-232 to 79-246 do not relieve a parent or guardian from the compulsory attendance requirements in section 79-201.

(2) The program shall not apply to any student who resides in a district which has entered into an annexation agreement pursuant to section 79-473, except that such student may transfer to another district which accepts option students.

**Source:** Laws 1989, LB 183, § 3; Laws 1990, LB 843, § 4; Laws 1991, LB 207, § 3; Laws 1993, LB 348, § 64; R.S.1943, (1994), § 79-3403; Laws 1996, LB 900, § 38; Laws 2008, LB1154, § 7; Laws 2009, LB549, § 5; Laws 2013, LB410, § 3.

#### **79-235 Option students; treatment; building assignment.**

For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-1127, except as provided in section 79-241, option students shall be treated as resident students of the option school district. The option student may request a particular school building, but the building assignment of the option student shall be determined by the option school district. In determining eligibility for extracurricular activities as defined in section 79-2,126, the option student shall be treated similarly to other students who transfer into the school from another public, private, denominational, or parochial school.

**Source:** Laws 1989, LB 183, § 4; Laws 1990, LB 843, § 5; R.S.1943, (1994), § 79-3404; Laws 1996, LB 900, § 39; Laws 1996, LB 1050, § 8; Laws 2003, LB 249, § 1.

#### **79-236 Program; implementation.**

Beginning with the 1993-94 school year, the enrollment option program shall be implemented by all public school districts.

**Source:** Laws 1989, LB 183, § 5; Laws 1990, LB 843, § 6; Laws 1991, LB 207, § 4; Laws 1993, LB 348, § 65; R.S.1943, (1994), § 79-3405; Laws 1996, LB 900, § 40.

#### **79-237 Attendance; application; cancellation; forms.**

(1) For a student to begin attendance as an option student in an option school district which is not in a learning community in which the student resides, the

student's parent or legal guardian shall submit an application to the school board of the option school district between September 1 and March 15 for attendance during the following and subsequent school years. Except as provided in subsection (2) of this section, applications submitted after March 15 shall contain a release approval from the resident school district on the application form prescribed and furnished by the State Department of Education pursuant to subsection (8) of this section. A district may not accept or approve any applications submitted after such date without such a release approval. The option school district shall provide the resident school district with the name of the applicant on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission. The option school district shall notify, in writing, the parent or legal guardian of the student and the resident school district whether the application is accepted or rejected on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission.

(2) A student who relocates to a different resident school district after February 1, whose option school district merges with another district effective after February 1, or whose qualification for the option for school year 2013-14 is changed pursuant to the changes made to subsection (1) of section 79-234 by Laws 2013, LB410, may submit an application to the school board of an option school district for attendance during the immediately following and subsequent school years. Such application does not require the release approval of the resident school district. The option school district shall accept or reject such application within forty-five days.

(3) For a student who resides in a learning community to begin attendance in an option school district which is a member of such learning community, the student's parent or legal guardian shall submit an application to the school board of the option school district (a) for any learning community established prior to February 13, 2009, between February 13, 2009, and April 1, 2009, or (b) for any learning community established thereafter, between September 1 and March 15. Applications submitted after such deadlines shall be accompanied by a written release from the resident school district. Students who reside in a learning community shall only begin attendance in an option school district which is a member of such learning community prior to the end of the first full school year for which the option school district is a member of such learning community. The option school district shall provide the resident school district with the name of the applicant within five days after the applicable deadline. The option school district shall notify, in writing, the parent or legal guardian of the student and the resident school district whether the application is accepted or rejected on or before April 1. A parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of subsection (4) of section 79-238. Nothing in this subsection requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of subsection (4) of section 79-238 shall be based on any verified information provided on the application. If no such information is provided, the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of subsection (4) of section 79-238.

(4) Applications for students who do not actually attend the option school district may be withdrawn in good standing upon mutual agreement by both the resident and option school districts.

(5) No option student shall attend an option school district for less than one school year unless the student relocates to a different resident school district, completes requirements for graduation prior to the end of his or her senior year, transfers to a private or parochial school, or upon mutual agreement of the resident and option school districts cancels the enrollment option and returns to the resident school district.

(6) Except as provided in subsection (5) of this section, the option student shall attend the option school district until graduation unless the student relocates in a different resident school district, transfers to a private or parochial school, or chooses to return to the resident school district.

(7) In each case of cancellation pursuant to subsections (5) and (6) of this section, the student's parent or legal guardian shall provide written notification to the school board of the option school district and the resident school district on forms prescribed and furnished by the department under subsection (8) of this section in advance of such cancellation.

(8) The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

(9) An option student who subsequently chooses to attend a private or parochial school shall be automatically accepted to return to either the resident school district or option school district upon the completion of the grade levels offered at the private or parochial school. If such student chooses to return to the option school district, the student's parent or legal guardian shall submit another application to the school board of the option school district which shall be automatically accepted, and the deadlines prescribed in this section shall be waived.

**Source:** Laws 1989, LB 183, § 6; Laws 1990, LB 843, § 7; Laws 1993, LB 348, § 66; Laws 1993, LB 838, § 1; R.S.1943, (1994), § 79-3406; Laws 1996, LB 900, § 41; Laws 2001, LB 797, § 6; Laws 2006, LB 1024, § 19; Laws 2009, LB62, § 2; Laws 2009, LB549, § 6; Laws 2013, LB410, § 4.

**79-238 Application acceptance and rejection; standards; request for release; standards and conditions.**

(1) Except as provided in section 79-240, the school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option school district. Capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option school district will contract based on existing contractual arrangements, and availability of appropriate special education programs. The school board of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the

English language, or previous disciplinary proceedings except as provided in section 79-266.01. False or substantively misleading information submitted by a parent or guardian on an application to an option school district may be cause for the option school district to reject a previously accepted application if the rejection occurs prior to the student's attendance as an option student.

(2) The school board of every school district shall also adopt standards and conditions for acceptance or rejection of a request for release of a resident student submitting an application to an option school district after March 15 under subsection (1) of section 79-237.

(3) Any option school district shall give first priority for enrollment to siblings of option students, except that the option school district shall not be required to accept the sibling of an option student if the district is at capacity except as provided in subsection (1) of section 79-240.

(4) Any option school district that is in a learning community shall give second priority for enrollment to students who reside in the learning community and who contribute to the socioeconomic diversity of enrollment as defined in section 79-2110 at the school building to which the student will be assigned pursuant to section 79-235.

**Source:** Laws 1989, LB 183, § 7; Laws 1990, LB 843, § 8; Laws 1991, LB 207, § 5; Laws 1992, LB 1001, § 37; Laws 1994, LB 930, § 2; R.S.1943, (1994), § 79-3407; Laws 1996, LB 900, § 42; Laws 1997, LB 346, § 2; Laws 2001, LB 797, § 7; Laws 2006, LB 1024, § 20; Laws 2009, LB62, § 3; Laws 2009, LB549, § 7.

#### **79-239 Application; request for release; rejection; notice; appeal.**

If an application is rejected by the option school district or if the resident school district rejects a request for release under subsection (1) of section 79-237, the rejecting school district shall provide written notification to the parent or guardian stating the reasons for the rejection and the process for appealing such rejection to the State Board of Education. Such notification shall be sent by certified mail. The parent or legal guardian may appeal a rejection to the State Board of Education by filing a written request, together with a copy of the rejection notice, with the State Board of Education. Such request and copy of the notice must be received by the board within thirty days after the date the notification of the rejection was received by the parent or legal guardian. Such hearing shall be held in accordance with the Administrative Procedure Act and shall determine whether the procedures of sections 79-234 to 79-241 have been followed.

**Source:** Laws 1989, LB 183, § 8; Laws 1992, LB 1001, § 38; Laws 1993, LB 348, § 67; R.S.1943, (1994), § 79-3408; Laws 1996, LB 900, § 43; Laws 2009, LB549, § 8.

#### **Cross References**

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

#### **79-240 Relocation; automatic acceptance; deadlines waived.**

(1) The application of a student who relocates in a different school district but wants to continue attending his or her original resident school district and who has been enrolled in his or her original resident school district for the immedi-

ately preceding two years shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

(2) The application of an option student who relocates in a different school district but wants to continue attending the option school district shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

**Source:** Laws 1989, LB 183, § 9; Laws 1990, LB 843, § 9; Laws 1991, LB 207, § 6; Laws 1992, LB 1001, § 39; Laws 1993, LB 348, § 68; R.S.1943, (1994), § 79-3409; Laws 1996, LB 900, § 44; Laws 1996, LB 1050, § 9; Laws 2009, LB549, § 9.

#### **79-241 Transportation; fee authorized; reimbursement; when.**

(1) Except as provided in subsection (2) of this section, section 79-611 does not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. A school district may, upon mutual agreement with the parent or legal guardian of an option student, provide transportation to the option student on the same basis as provided for resident students. The school district may charge the parents of each option student transported a fee sufficient to recover the additional costs of such transportation.

(2) Parents or guardians of option students who qualify for free lunches shall be eligible for transportation reimbursement as described in section 79-611, except that they shall be reimbursed at the rate of one hundred forty-two and one-half percent of the mandatorily established mileage rate provided in section 81-1176 for each mile actually and necessarily traveled on each day of attendance by which the distance traveled one way from the residence of such student to the schoolhouse exceeds three miles.

(3) For option students verified as having a disability as defined in section 79-1118.01, the transportation services set forth in section 79-1129 shall be provided by the resident school district. The State Department of Education shall reimburse the resident school district for the cost of transportation in accordance with section 79-1144.

**Source:** Laws 1989, LB 183, § 10; Laws 1990, LB 843, § 10; Laws 1991, LB 207, § 7; Laws 1992, LB 1001, § 40; Laws 1993, LB 838, § 2; Laws 1993, LB 348, § 69; R.S.1943, (1994), § 79-3410; Laws 1996, LB 900, § 45; Laws 1997, LB 346, § 3; Laws 1998, Spec. Sess., LB 1, § 8; Laws 2013, LB410, § 5.

#### **79-242 Graduation credits; award of diploma.**

An option school district shall accept credits toward graduation that were awarded by another school district. The option school district shall award a diploma to an option student if the student meets its graduation requirements.

**Source:** Laws 1989, LB 183, § 12; R.S.1943, (1994), § 79-3412; Laws 1996, LB 900, § 46.

#### **79-243 School district; provide information.**

A school district shall make information about the school district and its schools, programs, policies, and procedures available to all interested people.

**Source:** Laws 1989, LB 183, § 13; R.S.1943, (1994), § 79-3413; Laws 1996, LB 900, § 47.

**79-244 Program; effect on contracting; child with a disability; restriction on transfer.**

The enrollment option program does not preclude a school district from contracting with other school districts, educational service units, or other state-approved entities for the provision of services. A child with a disability receiving services from another district pursuant to contract due to lack of appropriate programming in his or her resident school district is not eligible to transfer as an option student into the district currently providing services but is eligible to transfer as an option student into any other district which accepts option students and has an appropriate program.

**Source:** Laws 1989, LB 183, § 14; Laws 1990, LB 843, § 11; R.S.1943, (1994), § 79-3414; Laws 1996, LB 900, § 48; Laws 1997, LB 346, § 4.

**79-245 Tax Equity and Educational Opportunities Support Act; applicability.**

The Tax Equity and Educational Opportunities Support Act shall apply to the enrollment option program as provided in this section. For purposes of the act, (1) option students shall not be counted as formula students by the resident school district and shall be counted by the option school district and (2) the option school district shall include the funds received pursuant to this section in the calculation of other actual receipts as required by section 79-1018.01.

**Source:** Laws 1989, LB 183, § 15; Laws 1990, LB 843, § 12; Laws 1991, LB 511, § 69; Laws 1992, LB 245, § 74; R.S.1943, (1994), § 79-3415; Laws 1996, LB 900, § 49; Laws 1997, LB 346, § 5; Laws 1997, LB 347, § 5; Laws 1998, Spec. Sess., LB 1, § 9.

**Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-246 Special education programs; reimbursement to option school district.**

The State Department of Education shall reimburse each option school district for special education programs provided to option students in accordance with section 79-1142.

The resident school district of an option student shall be exempted from the payment responsibility set forth in section 79-1140.

For purposes of calculation to determine reimbursement pursuant to section 79-1142, the option school district shall include the adjusted average per pupil cost as defined in section 79-1114 of the option school district and not the amount received pursuant to section 79-245.

**Source:** Laws 1989, LB 183, § 16; Laws 1990, LB 843, § 13; R.S.1943, (1994), § 79-3416; Laws 1996, LB 900, § 50.

**79-247 Repealed. Laws 1997, LB 347, § 59.**

## (f) HEALTH INSPECTIONS

**79-248 Pupils; health inspections; notice of defects; contagious or infectious disease; duty of school district.**

Every school district shall cause children under its jurisdiction to be separately and carefully inspected, except as otherwise provided in this section, to ascertain if a child is suffering from (1) defective sight or hearing, (2) dental defects, or (3) other conditions as prescribed by the Department of Health and Human Services. Such inspections shall be conducted on a schedule prescribed by the department and shall be based on current medical and public health practice. If such inspection determines that any child has such condition, the school shall notify the parent of the child in writing of such condition and explain to such parent the necessity of professional attendance for such child. Whenever a child apparently shows symptoms of any contagious or infectious disease, such child shall be sent home immediately or as soon as safe and proper conveyance can be found and the proper school authority, school board, or board of education shall be at once notified. Such student may be excluded from school as provided in section 79-264. A child shall not be required to submit to an inspection required by this section if his or her parent or guardian provides school authorities with a statement signed by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her respective credentialing act or other qualified provider as identified by the department in rules and regulations adopted pursuant to section 79-249, stating that such child has undergone such required inspection within the past six months. A child shall submit to any required inspection for which such a statement is not received.

**Source:** Laws 1919, c. 241, § 1, p. 1004; C.S.1922, § 6536; Laws 1923, c. 55, § 1, p. 176; C.S.1929, § 79-2113; R.S.1943, § 79-2122; Laws 1949, c. 256, § 171, p. 748; Laws 1967, c. 538, § 1, p. 1778; R.S.1943, (1994), § 79-4,133; Laws 1996, LB 900, § 52; Laws 1996, LB 1044, § 815; Laws 2007, LB296, § 710; Laws 2010, LB713, § 1.

## Cross References

Immunization requirements, see sections 79-217 to 79-223.

**79-249 Pupils; health inspections; rules; duties of Department of Health and Human Services; compliance with Medication Aide Act; when.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations for conducting school health inspections, the qualifications of the person or persons authorized to make such inspections, and the health conditions to be observed and remedied and shall furnish to school authorities the rules and regulations and other useful materials for carrying out the purposes of sections 79-248 to 79-253. The department may make available to schools methods for the gathering, analysis, and sharing of school health data that do not violate any privacy laws.

On and after July 1, 1999, no staff member of any school shall administer medication unless the school complies with the applicable requirements of the Medication Aide Act. Notwithstanding any other provision, nothing in the act

shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

**Source:** Laws 1919, c. 241, § 2, p. 1004; C.S.1922, § 6537; C.S.1929, § 79-2114; R.S.1943, § 79-2123; Laws 1949, c. 256, § 172, p. 749; Laws 1967, c. 538, § 2, p. 1778; R.S.1943, (1994), § 79-4,134; Laws 1996, LB 900, § 53; Laws 1996, LB 1044, § 816; Laws 1998, LB 1354, § 43; Laws 2007, LB296, § 711; Laws 2010, LB713, § 2.

Cross References

Medication Aide Act, see section 71-6718.

**79-250 Pupils; health inspections; when required.**

During each school year the school district shall provide the inspections required by section 79-248 for the children then in attendance. As children enter school during the year, such inspections shall be confirmed upon their entrance.

**Source:** Laws 1919, c. 241, § 3, p. 1004; C.S.1922, § 6538; C.S.1929, § 79-2115; R.S.1943, § 79-2124; Laws 1949, c. 256, § 173, p. 749; Laws 1967, c. 538, § 3, p. 1778; R.S.1943, (1994), § 79-4,135; Laws 1996, LB 900, § 54; Laws 2010, LB713, § 3.

**79-251 Pupils; health inspections; duty of school board.**

The boards of education and school boards of the school districts of the state shall enforce the provisions of sections 79-248 to 79-253.

**Source:** Laws 1919, c. 241, § 4, p. 1004; C.S.1922, § 6539; C.S.1929, § 79-2116; R.S.1943, § 79-2125; Laws 1949, c. 256, § 174, p. 749; R.S.1943, (1994), § 79-4,136; Laws 1996, LB 900, § 55.

**79-252 Pupils; health inspections; employment of physicians authorized.**

In lieu of conducting the inspections required by section 79-248, the board of education or school board of any school district may employ regularly licensed physicians to make such inspections.

**Source:** Laws 1919, c. 241, § 5, p. 1005; C.S.1922, § 6540; C.S.1929, § 79-2117; R.S.1943, § 79-2126; Laws 1949, c. 256, § 175, p. 749; Laws 1967, c. 538, § 4, p. 1779; R.S.1943, (1994), § 79-4,137; Laws 1996, LB 900, § 56; Laws 2010, LB713, § 4.

**79-253 Pupils; health inspections; violation; penalty.**

Any person violating any of the provisions of sections 79-248 to 79-252 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1919, c. 241, § 6, p. 1005; C.S.1922, § 6541; C.S.1929, § 79-2118; R.S.1943, § 79-2127; Laws 1949, c. 256, § 176, p. 749; Laws 1977, LB 39, § 253; R.S.1943, (1994), § 79-4,138; Laws 1996, LB 900, § 57.

(g) STUDENT DISCIPLINE

**79-254 Act, how cited.**

Sections 79-254 to 79-294 shall be known and may be cited as the Student Discipline Act.

**Source:** Laws 1994, LB 1250, § 6; Laws 1995, LB 658, § 1; R.S.Supp.,1995, § 79-4,169; Laws 1996, LB 900, § 58; Laws 1999, LB 195, § 1.

**Cross References**

Gun-free school zones, see section 28-1204.04.

Membership in secret school organization, grounds for denial of school privileges, see section 79-2,101 et seq.

**79-255 Act; purpose.**

The purpose of the Student Discipline Act is to assure the protection of all elementary and secondary school students' constitutional right to due process and fundamental fairness within the context of an orderly and effective educational process. The sanctions defined in the act shall be interpreted at all times in the light of the principles of free speech and assembly protected under the Constitution of Nebraska and the United States Constitution and in recognition of the right of every student to public education.

**Source:** Laws 1976, LB 503, § 1; Laws 1994, LB 1250, § 7; R.S.1943, (1994), § 79-4,170; Laws 1996, LB 900, § 59.

**79-256 Terms, defined.**

For purposes of the Student Discipline Act, unless the context otherwise requires:

(1) Long-term suspension means the exclusion of a student from attendance in all schools within the system for a period exceeding five school days but less than twenty school days;

(2) Expulsion means exclusion from attendance in all schools within the system in accordance with section 79-283;

(3) Mandatory reassignment means the involuntary transfer of a student to another school in connection with any disciplinary action; and

(4) Short-term suspension means the exclusion of a student from attendance in all schools within the system for a period not to exceed five school days.

**Source:** Laws 1976, LB 503, § 10; Laws 1994, LB 1250, § 15; R.S.1943, (1994), § 79-4,179; Laws 1996, LB 900, § 60; Laws 1997, LB 232, § 1.

**79-257 School board or board of education; emergency disciplinary actions; authorized.**

The school board or board of education may authorize the emergency exclusion, short-term or long-term suspension, expulsion, or mandatory reassignment of any pupil from school for conduct prohibited by the board's rules or standards established pursuant to the Student Discipline Act if such emergency exclusion, short-term or long-term suspension, expulsion, or mandatory reassignment complies with the procedures required by the act.

**Source:** Laws 1976, LB 503, § 2; Laws 1994, LB 1250, § 8; R.S.1943, (1994), § 79-4,171; Laws 1996, LB 900, § 61.

**79-258 Administrative and teaching personnel; authorized actions.**

Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation.

**Source:** Laws 1976, LB 503, § 3; Laws 1994, LB 1250, § 9; R.S.1943, (1994), § 79-4,172; Laws 1996, LB 900, § 62.

This section provides authority for school teachers and administrators to use physical contact short of corporal punishment to the degree necessary to preserve order and control in the school environment, and authorizes an acceptable level of incidental

physical contact, as is necessary for teachers to promote personal interaction with their students. *Daily v. Board of Ed. of Morrill Cty. School Dist. No. 62-0063*, 256 Neb. 73, 588 N.W.2d 813 (1999).

**79-259 Student suspension, expulsion, or exclusion; not a violation of compulsory attendance; compliance with other laws required.**

If a student is suspended, expelled, or excluded from school or from any educational function pursuant to the Student Discipline Act, such absence from school shall not be deemed a violation on the part of any person under any compulsory school attendance statutes. Any suspension or expulsion under the act shall comply with the requirements of the Special Education Act and the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq.

**Source:** Laws 1976, LB 503, § 4; Laws 1994, LB 1250, § 10; R.S.1943, (1994), § 79-4,173; Laws 1996, LB 900, § 63.

**Cross References**

**Compulsory attendance**, see sections 79-201 to 79-210.  
**Special Education Act**, see section 79-1110.

**79-260 Notice; when given.**

Any statement, notice, recommendation, determination, or similar action specified in the Student Discipline Act shall be effectively given at the time written evidence thereof is delivered personally to or upon receipt of certified or registered mail or upon actual knowledge by a student or his or her parent or guardian.

**Source:** Laws 1976, LB 503, § 5; Laws 1994, LB 1250, § 11; R.S.1943, (1994), § 79-4,174; Laws 1996, LB 900, § 64.

**79-261 School board or board of education; powers; delegation of authority.**

(1) The school board or board of education may by rule amplify, supplement, or extend the procedures provided in the Student Discipline Act if such actions are not inconsistent with the act.

(2) Any action taken by the school board or board of education or by its employees or agents in a material violation of the act shall be considered null, void, and of no effect.

(3) The school board or board of education may authorize the delegation to other school officials of responsibilities directed to the principal or superintendent by the act.

**Source:** Laws 1976, LB 503, § 6; Laws 1994, LB 1250, § 12; R.S.1943, (1994), § 79-4,175; Laws 1996, LB 900, § 65.

School board not compelled to promulgate rules concerning distribution of literature. *Hernandez v. Hanson*, 430 F.Supp. 1154 (D. Neb. 1977).

**79-262 School board or board of education; rules and standards; establish; distribute and post.**

(1) The school board or board of education shall establish and promulgate rules and standards concerning student conduct which are reasonably necessary to carry out or to prevent interference with carrying out any educational function, if such rules and standards are clear and definite so as to provide clear notice to the student and his or her parent or guardian as to the conduct prescribed, prohibited, or required under the rules and standards. Notwithstanding any other provisions contained in the Student Discipline Act, the school board or board of education may by rule specify a particular action as a sanction for particular conduct. Any such action must be otherwise authorized by section 79-258, 79-265, or 79-267. Any such rule shall be binding on all students, school officials, board members, and hearing examiners. Expulsion may be specified as a sanction for particular conduct only if the school board or board of education finds that the type of conduct for which expulsion is specified has the potential to seriously affect the health, safety, or welfare of the student, other students, staff members, or any other person or to otherwise seriously interfere with the educational process.

(2) All rules and standards established by school officials, other than the board, applicable to students shall not conflict with rules and standards adopted by the board. The board may change any rule or standard in accordance with policies which it may from time to time adopt.

(3) Rules or standards which form the basis for discipline shall be distributed to each student and his or her parent or guardian at the beginning of each school year, or at the time of enrollment if during the school year, and shall be posted in conspicuous places in each school during the school year. Changes in rules and standards shall not take effect until reasonable effort has been made to distribute such changes to each student and his or her parent or guardian.

**Source:** Laws 1976, LB 503, § 7; Laws 1983, LB 209, § 1; Laws 1994, LB 1250, § 13; R.S.1943, (1994), § 79-4,176; Laws 1996, LB 900, § 66.

The statutory procedures to be followed in establishing and promulgating rules and standards of student conduct and in suspending students for violation of such rules embody all due

process requirements set out in *Goss v. Lopez*, 419 U.S. 565 (1975). *Walker v. Bradley*, 211 Neb. 873, 320 N.W.2d 900 (1982).

**79-263 School district; policy regarding firearms; requirements.**

(1) Each school district shall adopt a policy requiring the expulsion from school for a period of not less than one year of any student who is determined to have knowingly and intentionally possessed, used, or transmitted a firearm on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or his or her designee, or at a school-sponsored activity or

athletic event. For purposes of this section, firearm means a firearm as defined in 18 U.S.C. 921. The policy shall authorize the superintendent or the school board or board of education to modify the expulsion requirement on an individual basis.

(2) Each school district shall provide annually to the State Department of Education:

(a) An assurance that the school district has in effect the policy required by subsection (1) of this section; and

(b) A description of the circumstances surrounding any expulsions imposed under the policy required by subsection (1) of this section, including:

- (i) The name of the school concerned;
- (ii) The number of students expelled from the school; and
- (iii) The types of weapons concerned.

**Source:** Laws 1995, LB 658, § 6; R.S.Supp.,1995, § 79-4,176.01; Laws 1996, LB 900, § 67; Laws 1996, LB 1050, § 3.

#### Cross References

Gun-free school zones, see section 28-1204.04.

### **79-264 Student; exclusion; circumstances; emergency exclusion; procedure.**

(1) Any student may be excluded from school in the following circumstances, subject to the procedural provisions of section 79-265, and, if longer than five school days, subject to the provisions of subsection (3) of this section:

(a) If the student has a dangerous communicable disease transmissible through normal school contacts and poses an imminent threat to the health or safety of the school community; or

(b) If the student's conduct presents a clear threat to the physical safety of himself, herself, or others, or is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education.

(2) Any emergency exclusion shall be based upon a clear factual situation warranting it and shall last not longer than is necessary to avoid the dangers described in subsection (1) of this section.

(3) If the superintendent or his or her designee determines that such emergency exclusion shall extend beyond five days, the school board shall adopt a procedure for a hearing to be held and a final determination made within ten school days after the initial date of exclusion. Such procedure shall substantially comply with the provisions of sections 79-266 to 79-287, and such provisions shall be modified only to the extent necessary to accomplish the hearing and determination within this shorter time period.

**Source:** Laws 1976, LB 503, § 8; R.S.1943, (1994), § 79-4,177; Laws 1996, LB 900, § 68.

#### Cross References

Contagious or infectious disease, child with symptoms, duty of school officials, see section 79-248.

Under subsection (1)(b) of this section, attendance by a public school student at a school where presence of a dangerous and communicable disease is confirmed, when the student is unimmunized against the disease, is conduct that presents a clear

threat to the physical safety of the unimmunized student and other students and allows the unimmunized student's exclusion from school. *Maack v. School Dist. of Lincoln*, 241 Neb. 847, 491 N.W.2d 341 (1992).

**79-265 Principal; suspend student; grounds; procedure; written statement; conference; guidelines for completion of classwork.**

(1) The principal may deny any student the right to attend school or to take part in any school function for a period of up to five school days on the following grounds:

(a) Conduct constituting grounds for expulsion as set out in the Student Discipline Act; or

(b) Any other violation of rules and standards of behavior adopted under the act.

(2) Such short-term suspension shall be made only after the principal has made an investigation of the alleged conduct or violation and has determined that such suspension is necessary to help any student, to further school purposes, or to prevent an interference with school purposes.

(3) Before such short-term suspension takes effect, the student shall be given oral or written notice of the charges against him or her, an explanation of the evidence the authorities have, and an opportunity to present his or her version.

(4) Within twenty-four hours or such additional time as is reasonably necessary following such suspension, the principal shall send a written statement to the student and his or her parent or guardian describing the student's conduct, misconduct, or violation of the rule or standard and the reasons for the action taken. The principal shall make a reasonable effort to hold a conference with the parent or guardian before or at the time the student returns to school.

(5) Any student who is suspended pursuant to this section may be given an opportunity to complete any classwork, including, but not limited to, examinations, missed during the period of suspension. Each public school district shall develop and adopt guidelines stating the criteria school officials shall use in determining whether and to what extent such opportunity for completion will be granted to suspended students. The guidelines shall be provided to the student and parent or guardian at the time of suspension.

**Source:** Laws 1976, LB 503, § 9; Laws 1994, LB 1250, § 14; R.S.1943, (1994), § 79-4,178; Laws 1996, LB 900, § 69.

The statutory procedures to be followed in establishing and promulgating rules and standards of student conduct and in suspending students for violation of such rules embody all due process requirements set out in *Goss v. Lopez*, 419 U.S. 565 (1975). *Walker v. Bradley*, 211 Neb. 873, 320 N.W.2d 900 (1982).

**79-266 Pre-expulsion procedures; when; expelled student; alternative assignments; suspension of enforcement; agreement between school boards; reinstatement; when; expungement.**

(1) Beginning July 1, 1997, each school district shall have an alternative school, class, or educational program or the procedures of subsection (2) of this section available or in operation for all expelled students.

Any two or more school boards or boards of education may join together in providing alternative schools, classes, or educational programs. Any district may by agreement with another district send its suspended or expelled students to any alternative school, class, or educational program already in operation by such other district. An educational program may include, but shall not be limited to, individually prescribed educational and counseling programs or a community-centered classroom with experiences for the student as an observer or aide in governmental functions, as an on-the-job trainee, or as a participant

in specialized tutorial experiences. Such programs shall include an individualized learning program to enable the student to continue academic work for credit toward graduation. The State Department of Education shall adopt and promulgate rules and regulations relating to alternative schools, classes, and educational programs.

(2) If a district does not provide an alternative school, class, or educational program for expelled students, the district shall follow the procedures in this subsection prior to expelling a student unless the expulsion was required by subsection (4) of section 79-283: A conference shall be called by a school administrator and held to assist the district in the development of a plan with the participation of a parent or legal guardian, the student, a school representative, and a representative of either a community organization with a mission of assisting young people or a representative of an agency involved with juvenile justice. The plan shall be in writing and adopted by a school administrator and presented to the student and the parent or legal guardian. The plan shall (a) specify guidelines and consequences for behaviors which have been identified as preventing the student from achieving the desired benefits from the educational opportunities provided, (b) identify educational objectives that must be achieved in order to receive credits toward graduation, (c) specify the financial resources and community programs available to meet both the educational and behavioral objectives identified, and (d) require the student to attend monthly reviews in order to assess the student's progress toward meeting the specified goals and objectives.

(3) A school district that has expelled a student may suspend the enforcement of such expulsion unless the expulsion was required by subsection (4) of section 79-283. The suspension may be for a period not to exceed the length of the expulsion. As a condition of such suspended action, the school district may require participation in a plan pursuant to subsection (2) of this section or assign the student to a school, class, or educational program which the school district deems appropriate.

At the conclusion of such suspension period, the school district shall (a) reinstate any student who has satisfactorily participated in a plan pursuant to subsection (2) of this section or the school, class, or educational program to which such student has been assigned and permit the student to return to the school of former attendance or to attend other programs offered by the district or (b) if the student's conduct has been unsatisfactory, enforce the remainder of the expulsion action.

If the student is reinstated, the district may also take action to expunge the record of the expulsion action.

**Source:** Laws 1994, LB 1250, § 16; Laws 1995, LB 658, § 2; R.S.Supp.,1995, § 79-4,179.01; Laws 1996, LB 900, § 70; Laws 1996, LB 1050, § 4; Laws 1997, LB 232, § 2.

### **79-266.01 Expelled student; enrollment in public school; when.**

If a student has been expelled from a public school in any school district in any state or from a private, denominational, or parochial school in any state and the student has not completed the terms of the expulsion, the student shall not be permitted to enroll in a public school in any school district until the school board of the district in which enrollment is sought approves, by a majority vote, the enrollment of the student. As a condition of enrollment, the

school board may require attendance in an alternative school, class, or educational program pursuant to section 79-266 until the terms of the expulsion are completed. A student expelled from a private, denominational, or parochial school or from a school in another state may not be prohibited from enrolling in a public school district in which the student resides or in which the student has been accepted pursuant to the enrollment option program for any period of time beyond the time limits placed on expulsion pursuant to the Student Discipline Act or for any expulsion for an offense for which expulsion is not authorized for a public school student under the act.

**Source:** Laws 1999, LB 195, § 2.

**79-267 Student conduct constituting grounds for long-term suspension, expulsion, or mandatory reassignment; enumerated; alternatives for truant or tardy students.**

The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;

(3) Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103.02 or being under the influence of a controlled substance or alcoholic liquor;

(7) Public indecency as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(8) Engaging in bullying as defined in section 79-2,137;

(9) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of

this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 28-319.01, as such sections now provide or may hereafter from time to time be amended;

(10) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or

(11) A repeated violation of any rules and standards validly established pursuant to section 79-262 if such violations constitute a substantial interference with school purposes.

It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from required school activities.

**Source:** Laws 1976, LB 503, § 11; Laws 1983, LB 209, § 2; Laws 1988, LB 316, § 3; Laws 1994, LB 1250, § 17; Laws 1995, LB 658, § 3; R.S.Supp.,1995, § 79-4,180; Laws 1996, LB 900, § 71; Laws 1996, LB 1050, § 5; Laws 2006, LB 1199, § 83; Laws 2008, LB205, § 2; Laws 2010, LB861, § 83.

#### Cross References

**Anabolic steroids**, prohibited acts, see section 79-296.

**Membership in secret school organization**, grounds for expulsion, see section 79-2,101 et seq.

The subsections of this section are coextensive and a particular instance of student conduct may constitute grounds for discipline under more than one subsection of the statute. A particular instance of student conduct may be punishable under a subsection of this section despite being excepted from the scope of another subsection, so long as the conduct meets the requirements of the subsection under which the school district seeks to discipline the student. *Busch ex rel. Knave v. Omaha Pub. Sch. Dist.*, 261 Neb. 484, 623 N.W.2d 672 (2001).

Under subsection (1) of this section, the term "school purposes" includes the maintenance of an orderly and effective educational system. The use of violence or force to cause personal injury to a school employee who is attempting to prevent or break up a physical confrontation is a substantial interfer-

ence with school purposes within the meaning of subsection (1) of this section. *Busch ex rel. Knave v. Omaha Pub. Sch. Dist.*, 261 Neb. 484, 623 N.W.2d 672 (2001).

Pursuant to subsection (3) of this section (formerly section 79-4,180), under its usual meaning, an injury caused by accident is one caused accidentally, unintentionally, or unexpectedly. *Spencer v. Omaha Pub. Sch. Dist.*, 252 Neb. 750, 566 N.W.2d 757 (1997).

This section (formerly section 79-4,180) lists the conduct which constitutes grounds for the use of long-term suspension, expulsion, or mandatory reassignment; it does not mandate the use of any one of these forms of punishment. *Kolesnick v. Omaha Pub. Sch. Dist.*, 251 Neb. 575, 558 N.W.2d 807 (1997).

### **79-268 Long-term suspension, expulsion, or mandatory reassignment; procedures; enumerated.**

If a principal makes a decision to discipline a student by long-term suspension, expulsion, or mandatory reassignment, the following procedures shall be followed:

(1) On the date of the decision, a written charge and a summary of the evidence supporting such charge shall be filed with the superintendent. The school shall, within two school days after the decision, send written notice by registered or certified mail to the student and his or her parent or guardian informing them of the rights established under the Student Discipline Act;

(2) Such written notice shall include the following:

(a) The rule or standard of conduct allegedly violated and the acts of the student alleged to constitute a cause for long-term suspension, expulsion, or mandatory reassignment, including a summary of the evidence to be presented against the student;

(b) The penalty, if any, which the principal has recommended in the charge and any other penalty to which the student may be subject;

(c) A statement that, before long-term suspension, expulsion, or mandatory reassignment for disciplinary purposes can be invoked, the student has a right to a hearing, upon request, on the specified charges;

(d) A description of the hearing procedures provided by the act, along with procedures for appealing any decision rendered at the hearing;

(e) A statement that the principal, legal counsel for the school, the student, the student's parent, or the student's representative or guardian has the right (i) to examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and (ii) to know the identity of the witnesses to appear at the hearing and the substance of their testimony; and

(f) A form on which the student, the student's parent, or the student's guardian may request a hearing, to be signed by such parties and delivered to the principal or superintendent in person or by registered or certified mail as prescribed in sections 79-271 and 79-272; and

(3) When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the superintendent, the student may be suspended by the principal until the date the long-term suspension, expulsion, or mandatory reassignment takes effect if no hearing is requested or, if a hearing is requested, the date the hearing examiner makes the report of his or her findings and a recommendation of the action to be taken to the superintendent, if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of (a) interference with an educational function or school purpose or (b) a personal injury to the student himself or herself, other students, school employees, or school volunteers.

The Student Discipline Act does not preclude the student or the student's parent, guardian, or representative from discussing and settling the matter with appropriate school personnel prior to the hearing stage.

**Source:** Laws 1976, LB 503, § 12; Laws 1994, LB 1250, § 18; R.S.1943, (1994), § 79-4,181; Laws 1996, LB 900, § 72.

**79-269 Long-term suspension, expulsion, or mandatory reassignment; hearing; procedure; hearing examiner; how designated; examination of records.**

(1) If a hearing is requested within five school days after receipt of the notice as provided in section 79-268, the superintendent shall appoint a hearing examiner who shall, within two school days after being appointed, give written notice to the principal, the student, and the student's parent or guardian of the time and place for the hearing.

(2) The hearing examiner shall be any person designated by the school district's superintendent, school board or board of education, or counsel, if such person (a) has not brought the charges against the student, (b) shall not be a witness at the hearing, and (c) has no involvement in the charge.

(3) The hearing shall be scheduled within a period of five school days after it is requested, but such time may be changed by the hearing examiner for good cause. No hearing shall be held upon less than two school days' actual notice to

the principal, the student, and the student's parent or guardian, except with the consent of all the parties.

(4) The principal or legal counsel for the school, the student, and the student's parent, guardian, or representative have the right to examine the records and written statements referred to in the Student Discipline Act as well as the statement of any witness in the possession of the school board or board of education at a reasonable time prior to the hearing.

**Source:** Laws 1976, LB 503, § 13; Laws 1994, LB 1250, § 19; R.S.1943, (1994), § 79-4,182; Laws 1996, LB 900, § 73.

**79-270 Hearing examiner; duties.**

In addition to the other duties provided in the Student Discipline Act, the hearing examiner shall remain impartial throughout all deliberations. The hearing examiner shall be available prior to any hearing held pursuant to the act to answer any questions the principal, the student, or the student's parent or guardian may have regarding the nature and conduct of the hearing.

**Source:** Laws 1976, LB 503, § 14; Laws 1994, LB 1250, § 20; R.S.1943, (1994), § 79-4,183; Laws 1996, LB 900, § 74.

**79-271 Hearing; not requested within five days; recommended punishment; effect.**

If a hearing is not requested under sections 79-268 and 79-269 by the student or the student's parent or guardian within five school days following receipt of the written notice, the punishment recommended in the charge by the principal or his or her designee shall automatically go into effect upon the fifth school day following receipt of the written notice by the student or his or her parent or guardian as required in section 79-268.

**Source:** Laws 1976, LB 503, § 15; Laws 1994, LB 1250, § 21; R.S.1943, (1994), § 79-4,184; Laws 1996, LB 900, § 75.

**79-272 Hearing; requested within thirty days; effect.**

If a hearing is requested under sections 79-268 and 79-269 more than five school days but not more than thirty calendar days following the actual receipt of written notice, the hearing shall be held but the imposed punishment shall continue in effect pending final determination.

**Source:** Laws 1976, LB 503, § 16; Laws 1994, LB 1250, § 22; R.S.1943, (1994), § 79-4,185; Laws 1996, LB 900, § 76.

**79-273 Hearing; by whom attended; witnesses; student excluded; when.**

Any hearing conducted pursuant to the Student Discipline Act shall be attended by the hearing examiner, the student, the student's parent or guardian, the student's representative, if any, and counsel for the school board or board of education, if the hearing examiner or the superintendent deems it advisable. Witnesses shall be present only when they are giving information at the hearing. The student may be excluded in the discretion of the hearing examiner at times when the student's psychological evaluation or emotional problems are being discussed. The student's representative may be an attorney.

The hearing examiner may exclude anyone from the hearing when his or her actions substantially disrupt an orderly hearing.

**Source:** Laws 1976, LB 503, § 17; Laws 1994, LB 1250, § 23; R.S.1943, (1994), § 79-4,186; Laws 1996, LB 900, § 77.

**79-274 Hearing; legal counsel; powers and duties.**

The school board or board of education, acting through the superintendent, may cause legal counsel to be present either for the purpose of acting as the designee of the principal or for the purpose of advising the hearing examiner in the conduct of the hearing requested under sections 79-268 and 79-269. Any legal counsel who acts as the designee of the principal in presenting the school's case against the student shall not advise the hearing examiner on the conduct of the hearing or later advise administrators or board members on the conduct of any appeal, but legal counsel may give advice on technical and procedural aspects of the school's presentation and may advise the hearing examiner and the board as long as the legal counsel does not act as the principal's designee in presenting the school's case.

**Source:** Laws 1976, LB 503, § 18; Laws 1994, LB 1250, § 24; R.S.1943, (1994), § 79-4,187; Laws 1996, LB 900, § 78.

**79-275 Hearing; student; testimony.**

At a hearing requested under sections 79-268 and 79-269, the student may speak in his or her own defense and may be questioned on his or her testimony, but he or she may choose not to testify and, in such case, shall not be threatened with punishment nor be later punished for refusal to testify.

**Source:** Laws 1976, LB 503, § 19; Laws 1994, LB 1250, § 25; R.S.1943, (1994), § 79-4,188; Laws 1996, LB 900, § 79.

**79-276 Hearing; evidence on student's conduct and records.**

At a hearing requested under sections 79-268 and 79-269, the principal shall present to the hearing examiner statements, in affidavit form, of any person having information about the student's conduct and the student's records but not unless such statements and records have been made available to the student or the student's parent, guardian, or representative prior to the hearing. The information contained in such records shall be explained and interpreted, prior to or at the hearing, to the student, parent, guardian, or representative, upon request, by appropriate school personnel.

**Source:** Laws 1976, LB 503, § 20; Laws 1994, LB 1250, § 26; R.S.1943, (1994), § 79-4,189; Laws 1996, LB 900, § 80.

**79-277 Hearing; rules of evidence or courtroom procedures; not applicable.**

In conducting the hearing requested under sections 79-268 and 79-269, the hearing examiner shall not be bound by the rules of evidence or any other courtroom procedure.

**Source:** Laws 1976, LB 503, § 21; Laws 1994, LB 1250, § 27; R.S.1943, (1994), § 79-4,190; Laws 1996, LB 900, § 81.

**79-278 Hearing; witnesses; testimony; cross-examination.**

(1) The student, the student's parent, guardian, or representative, the principal, or the hearing examiner may ask witnesses to testify at the hearing requested under sections 79-268 and 79-269. Such testimony shall be under oath, and the hearing examiner shall be authorized to administer the oath. The hearing examiner shall make reasonable effort to assist the student or the student's parent, guardian, or representative in obtaining the attendance of witnesses.

(2) The student, the student's parent, guardian, or representative, the principal, or the hearing examiner has the right to question any witness giving information at the hearing.

**Source:** Laws 1976, LB 503, § 22; Laws 1994, LB 1250, § 28; R.S.1943, (1994), § 79-4,191; Laws 1996, LB 900, § 82.

#### **79-279 Hearing; witnesses; immunity.**

Any person giving evidence by written statement or in person at a hearing requested under sections 79-268 and 79-269 shall be given the same immunity from liability as a person testifying in a court case.

**Source:** Laws 1976, LB 503, § 23; Laws 1994, LB 1250, § 29; R.S.1943, (1994), § 79-4,192; Laws 1996, LB 900, § 83.

#### **79-280 Hearing; recorded; how paid.**

The proceedings of the hearing requested under sections 79-268 and 79-269 shall be recorded at the expense of the school district.

**Source:** Laws 1976, LB 503, § 24; Laws 1994, LB 1250, § 30; R.S.1943, (1994), § 79-4,193; Laws 1996, LB 900, § 84.

#### **79-281 Hearing; joint hearing; separate hearings; when.**

(1) When more than one student is charged with violating the same rule and having acted in concert and when the facts are substantially the same for all such students, a single hearing requested under sections 79-268 and 79-269 may be conducted for such students as a group if the hearing examiner believes that a single hearing is not likely to result in confusion and that no student shall have his or her interests substantially prejudiced by a single hearing.

(2) If during the conduct of the hearing the hearing examiner finds that a student's interests will be substantially prejudiced by a group hearing or that the hearing is resulting in confusion, the hearing examiner may order a separate hearing for any student.

**Source:** Laws 1976, LB 503, § 25; Laws 1994, LB 1250, § 31; R.S.1943, (1994), § 79-4,194; Laws 1996, LB 900, § 85.

#### **79-282 Hearing; hearing examiner; report; contents; review; final disposition; how determined.**

(1) After a hearing requested under sections 79-268 and 79-269, a report shall be made by the hearing examiner of his or her findings and a recommendation of the action to be taken, which report shall explain, in terms of the needs of both the student and the school board, the reasons for the particular action recommended. Such recommendation may range from no action, through the entire field of counseling, to long-term suspension, expulsion, mandatory reassignment, or an alternative educational placement under section 79-266.

(2) A review shall be made of the hearing examiner's report by the superintendent, who may change, revoke, or impose the sanction recommended by the hearing examiner but shall not impose a sanction more severe than that recommended by the hearing examiner.

(3) The findings and recommendations of the hearing examiner, the determination by the superintendent, and any determination on appeal to the governing body, shall be made solely on the basis of the evidence presented at the hearing or, in addition, on any evidence presented on appeal.

**Source:** Laws 1976, LB 503, § 26; Laws 1994, LB 1250, § 32; Laws 1995, LB 658, § 4; R.S.Supp.,1995, § 79-4,195; Laws 1996, LB 900, § 86.

**79-283 Hearing; final disposition; written notice; effect; period of expulsion; review; when; procedure; readmittance.**

(1) Written notice of the findings and recommendations of the hearing examiner and the determination of the superintendent under section 79-282 shall be made by certified or registered mail or by personal delivery to the student or the student's parent or guardian. Upon receipt of such written notice by the student, parent, or guardian, the determination of the superintendent shall take immediate effect.

(2) Except as provided in subsections (3) and (4) of this section, the expulsion of a student shall be for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred (a) within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or (b) within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year subject to the provisions of subsection (5) of this section. Such action may be modified or terminated by the school district at any time during the expulsion period.

(3) The expulsion of a student for (a) the knowing and intentional use of force in causing or attempting to cause personal injury to a school employee, school volunteer, or student except as provided in subdivision (3) of section 79-267 or (b) the knowing and intentional possession, use, or transmission of a dangerous weapon, other than a firearm, shall be for a period not to exceed the remainder of the school year in which it took effect if the misconduct occurs during the first semester. If the expulsion takes place during the second semester, the expulsion shall remain in effect for summer school and may remain in effect for the first semester of the following school year. Such action may be modified or terminated by the school district at any time during the expulsion period.

(4) The expulsion of a student for the knowing and intentional possession, use, or transmission of a firearm, which for purposes of this section means a firearm as defined in 18 U.S.C. 921 as of January 1, 1995, shall be for a period as provided by the school district policy adopted pursuant to section 79-263. This subsection shall not apply to (a) the issuance of firearms to or possession of firearms by members of the Reserve Officers Training Corps when training or (b) firearms which may lawfully be possessed by the person receiving instruction under the immediate supervision of an adult instructor who may lawfully possess firearms.

(5) Any expulsion that will remain in effect during the first semester of the following school year shall be automatically scheduled for review before the

beginning of the school year. The review shall be conducted by the hearing examiner after the hearing examiner has given notice of the review to the student and the student's parent or guardian. This review shall be limited to newly discovered evidence or evidence of changes in the student's circumstances occurring since the original hearing. This review may lead to a recommendation by the hearing examiner that the student be readmitted for the upcoming school year. If the school board or board of education or a committee of such board took the final action to expel the student, the student may be readmitted only by action of the board. Otherwise the student may be readmitted by action of the superintendent.

**Source:** Laws 1976, LB 503, § 27; Laws 1994, LB 1250, § 33; Laws 1995, LB 658, § 5; Laws 1996, LB 893, § 1; R.S.Supp.,1995, § 79-4,196; Laws 1996, LB 900, § 87.

#### **79-284 Case record; contents.**

The record in a case under the Student Discipline Act shall consist of the charge, the notice, the evidence presented, the hearing examiner's findings and recommendations, and the action of the superintendent. With respect to any appeal to a court or any subsequent appeal, the record shall consist, in addition, of any additional evidence taken and any additional action taken in the case.

**Source:** Laws 1976, LB 503, § 28; Laws 1994, LB 1250, § 34; R.S.1943, (1994), § 79-4,197; Laws 1996, LB 900, § 88.

#### **79-285 Hearing; appeal to school board or board of education; procedure.**

(1) The student or the student's parent or guardian may, within seven school days following receipt of the written notice of the determination of the superintendent under section 79-282, appeal the superintendent's determination to the school board or board of education by a written request which shall be filed with the secretary of the board or with the superintendent.

(2) A hearing shall be held before the school board or the board of education within a period of ten school days after it is requested, and such time for a hearing may be changed by mutual agreement of the student and superintendent, except that the hearing may be held before a committee of the school board or board of education of not less than three members. Such appeal shall be made on the record, except that new evidence may be admitted to avoid a substantial threat of unfairness and such new evidence shall be recorded as provided in section 79-280.

**Source:** Laws 1976, LB 503, § 29; Laws 1983, LB 209, § 3; Laws 1994, LB 1250, § 35; R.S.1943, (1994), § 79-4,198; Laws 1996, LB 900, § 89.

#### **79-286 Hearing; appeal; school board or board of education; powers and duties.**

(1) After examining the record and taking new evidence pursuant to section 79-285, if any, the school board or board of education or the designated committee thereof may withdraw to deliberate privately upon such record and new evidence. Any such deliberation shall be held in the presence only of board members in attendance at the appeal proceeding but may be held in the

presence of legal counsel who has not previously acted as the designee of the principal in presenting the school's case before the hearing examiner.

(2) If any questions arise during such deliberations which require additional evidence, the deliberating body may reopen the hearing to receive such evidence, subject to the right of all parties to be present.

(3) The board may alter the superintendent's disposition of the case if it finds the decision to be too severe but may not impose a more severe sanction.

**Source:** Laws 1976, LB 503, § 30; Laws 1994, LB 1250, § 36; R.S.1943, (1994), § 79-4,199; Laws 1996, LB 900, § 90.

**79-287 Hearing; appeal; board; final action.**

The final action of the board under section 79-286 shall be evidenced by personally delivering or mailing by certified mail a copy of the board's decision to the student and his or her parent or guardian.

**Source:** Laws 1976, LB 503, § 31; Laws 1994, LB 1250, § 37; R.S.1943, (1994), § 79-4,200; Laws 1996, LB 900, § 91.

**79-288 Final decision; judicial review; appeal to district court; other relief.**

Any person aggrieved by a final decision in a contested case under the Student Discipline Act, whether such decision is affirmative or negative in form, shall be entitled to judicial review under sections 79-288 to 79-292. Nothing in the act shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

**Source:** Laws 1976, LB 503, § 32; Laws 1994, LB 1250, § 38; R.S.1943, (1994), § 79-4,201; Laws 1996, LB 900, § 92.

**79-289 Judicial review; procedure.**

(1) Proceedings for review under sections 79-288 to 79-292 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 school board or board of education under sections 79-286 and 79-287.

(2) All parties of record shall be made parties to the proceedings for review. The court, in its discretion, may permit other interested persons to intervene.

(3) Summons shall be served as in other actions, except that a copy of the petition shall be served upon the board together with the summons. Service of summons upon a duly elected officer of the board or the appointed secretary of the board shall constitute service on the board.

(4) The filing of the petition or the service of summons upon the board shall not stay enforcement of a decision, but the board may stay enforcement, or the court may order a stay after notice to such board of application therefor and upon such terms as it deems proper.

(5) The court may require the party requesting such stay to give bond in such amount and condition as the court may direct but only in cases involving injury or damage to person or property.

**Source:** Laws 1976, LB 503, § 33; Laws 1994, LB 1250, § 39; R.S.1943, (1994), § 79-4,202; Laws 1996, LB 900, § 93.

A party aggrieved by a school board's decision under the student expulsion or suspension act may institute proceedings for review by the district court in the county where the action is

taken. *Maack v. School Dist. of Lincoln*, 241 Neb. 847, 491 N.W.2d 341 (1992).

**79-290 Judicial review; transcript of record and proceedings; responsive pleading not required.**

Within fifteen days after service of the petition under section 79-289 or within such further time as the court for good cause shown may allow, the school board or board of education shall prepare and transmit to the court a certified transcript of the record which shall include the rules and regulations of the school board relied upon by the school district in its determination to suspend, reassign, or expel the student and the proceedings conducted before it, including the final decision sought to be reversed, vacated, or modified. The school board need not file any responsive pleading.

**Source:** Laws 1976, LB 503, § 34; Laws 1983, LB 209, § 4; Laws 1994, LB 1250, § 40; R.S.1943, (1994), § 79-4,203; Laws 1996, LB 900, § 94.

**79-291 Judicial review; conducted without a jury; grounds for judicial action.**

(1) The review under sections 79-288 to 79-292 shall be conducted by the court without a jury on the record.

(2) The court may affirm the decision of the school board or board of education, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the board's decision is:

- (a) In violation of constitutional provisions;
- (b) In excess of the statutory authority or jurisdiction of the board;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
- (f) Arbitrary or capricious.

**Source:** Laws 1976, LB 503, § 35; Laws 1994, LB 1250, § 41; R.S.1943, (1994), § 79-4,204; Laws 1996, LB 900, § 95.

**79-292 Appeal.**

An aggrieved party may secure a review of any final judgment of the district court under sections 79-288 to 79-291 by appeal as provided in the Administrative Procedure Act.

**Source:** Laws 1976, LB 503, § 36; Laws 1991, LB 732, § 145; R.S.1943, (1994), § 79-4,205; Laws 1996, LB 900, § 96.

**Cross References**

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

A party aggrieved by a district court's final judgment under the student suspension or expulsion act may appeal as provided in this section. *Maack v. School Dist. of Lincoln*, 241 Neb. 847, 491 N.W.2d 341 (1992).

**79-293 Nebraska Criminal Code violation; principal or principal's designee; notify law enforcement authorities; immunity.**

(1) The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities, of the county or city in which the school is located, of any act of the student described in section 79-267 which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code.

(2) The principal, the principal's designee, or any other school employee reporting an alleged violation of the Nebraska Criminal Code shall not be civilly or criminally liable as a result of any report authorized by this section unless (a) such report was false and the person making such report knew or should have known it was false or (b) the report was made with negligent disregard for the truth or falsity of the report.

**Source:** Laws 1994, LB 1250, § 42; R.S.1943, (1994), § 79-4,205.01; Laws 1996, LB 900, § 97.

#### Cross References

Nebraska Criminal Code, see section 28-101.

**79-294 Removal of minor from school premises; release to peace officer; principal or other school official; duties; peace officer; duties; juvenile court review; when.**

When a principal or other school official releases a minor student to a peace officer as defined in section 49-801 for the purpose of removing the minor from the school premises, the principal or other school official shall take immediate steps to notify the parent, guardian, or responsible relative of the minor regarding the release of the minor to the officer and regarding the place to which the minor is reportedly being taken, except when a minor has been taken into custody as a victim of suspected child abuse, in which case the principal or other school official shall provide the peace officer with the address and telephone number of the minor's parent or guardian. The peace officer shall take immediate steps to notify the parent, guardian, or responsible relative of the minor that the minor is in custody and the place where he or she is being held. If the peace officer has a reasonable belief that the minor would be endangered by a disclosure of the place where the minor is being held or that the disclosure would cause the custody of the minor to be disturbed, the peace officer may refuse to disclose the place where the minor is being held for a period not to exceed twenty-four hours. The peace officer shall, however, inform the parent, guardian, or responsible relative whether the child requires and is receiving medical or other treatment. The juvenile court shall review any decision not to disclose the place where the minor is being held at any subsequent detention hearing.

**Source:** Laws 1994, LB 1250, § 43; R.S.1943, (1994), § 79-4,205.02; Laws 1996, LB 900, § 98.

**79-295 Corporal punishment; prohibited.**

Corporal punishment shall be prohibited in public schools.

**Source:** Laws 1988, LB 316, § 1; R.S.1943, (1994), § 79-4,140; Laws 1996, LB 900, § 99.

Corporal punishment, as prohibited in this section, is reasonably understood to be the infliction of bodily pain as a penalty for disapproved behavior. The use of corporal punishment by a teacher, in violation of this section, may subject the teacher to

discipline for unprofessional conduct under section 79-824. *Daily v. Board of Ed. of Morrill Cty. School Dist. No. 62-0063*, 256 Neb. 73, 588 N.W.2d 813 (1999).

**79-296 Anabolic steroids; additional sanction.**

(1) In addition to the penalties provided in the Uniform Controlled Substances Act and section 79-267, any person under nineteen years of age who is a student at any public elementary, secondary, or postsecondary educational institution in this state who possesses, dispenses, delivers, or administers anabolic steroids as defined in section 28-401 in violation of the Uniform Controlled Substances Act may be prohibited from participating in any extra-curricular activities for not more than thirty consecutive days for the first offense. For the second or any subsequent offense, the student may be barred from participation in such activities for any period of time the institution deems appropriate pursuant to the written policy of the institution.

(2) Any sanction imposed pursuant to this section shall be in accordance with a written policy of the institution. The institution shall post the written policy in a conspicuous place and shall make a copy of the policy available to any student upon request.

**Source:** Laws 1990, LB 571, § 10; Laws 1992, LB 1019, § 122; R.S.1943, (1994), § 79-4,228; Laws 1996, LB 900, § 100.

**Cross References**

Penalties under Uniform Controlled Substances Act, see section 28-416.

Uniform Controlled Substances Act, see section 28-401.01.

Unlawful distribution of anabolic steroids to student, effect on employment, see section 48-232 et seq.

**(h) STUDENT ORGANIZATIONS**

**79-297 Repealed. Laws 2013, LB 410, § 24.**

**79-298 Repealed. Laws 2013, LB 410, § 24.**

**79-299 Repealed. Laws 2013, LB 410, § 24.**

**79-2,100 Repealed. Laws 2013, LB 410, § 24.**

**79-2,101 Public schools; membership in secret organizations, prohibited.**

It shall be unlawful for the pupils of any public school of this state to participate in or be members of any secret fraternity or secret organization that is in any degree a school organization.

**Source:** Laws 1909, c. 121, § 1, p. 461; R.S.1913, § 6945; C.S.1922, § 6527; C.S.1929, § 79-2104; R.S.1943, § 79-2114; Laws 1949, c. 256, § 163, p. 746; R.S.1943, (1994), § 79-4,125; Laws 1996, LB 900, § 105.

**79-2,102 Public schools; secret organizations; denial of school privileges; expulsion.**

Any school board or board of education may deny any or all school privileges to any regularly enrolled student who violates section 79-2,101 or may expel any such student for failure or refusal to comply with such section.

**Source:** Laws 1909, c. 121, § 2, p. 461; R.S.1913, § 6946; C.S.1922, § 6528; C.S.1929, § 79-2105; R.S.1943, § 79-2116; Laws 1949, c. 256, § 165, p. 747; R.S.1943, (1994), § 79-4,127; Laws 1996, LB 900, § 107.

**79-2,103 Public schools; outside organizations; rushing prohibited; violation; penalty.**

Any person, whether a pupil of any public school or not, who enters upon the school grounds or any school building for the purpose of rushing or soliciting, while there, any pupil of a public school to join any fraternity, society, or association organized outside of the schools shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than two dollars nor more than ten dollars.

**Source:** Laws 1909, c. 121, § 3, p. 462; R.S.1913, § 6947; C.S.1922, § 6529; C.S.1929, § 79-2106; R.S.1943, § 79-2115; Laws 1949, c. 256, § 164, p. 747; R.S.1943, (1994), § 79-4,126; Laws 1996, LB 900, § 106.

**(i) STUDENT FILES****79-2,104 Access to school files or records; limitation; fees; disciplinary material; removed and destroyed; when; sharing of student data, records, and information.**

(1) Any student in any public school or his or her parents, guardians, teachers, counselors, or school administrators shall have access to the school's files or records maintained concerning such student, including the right to inspect, review, and obtain copies of such files or records. No other person shall have access to such files or records except (a) when a parent, guardian, or student of majority age provides written consent or (b) as provided in subsection (3) of this section. The contents of such files or records shall not be divulged in any manner to any unauthorized person. All such files or records shall be maintained so as to separate academic and disciplinary matters, and all disciplinary material shall be removed and destroyed after a student's continuous absence from the school for a period of three years.

(2) Each public school may establish a schedule of fees representing a reasonable cost of reproduction for copies of a student's files or records for the parents or guardians of such student, except that the imposition of a fee shall not prevent parents of students from exercising their right to inspect and review the students' files or records and no fee shall be charged to search for or retrieve any student's files or records.

(3)(a) This section does not preclude authorized representatives of (i) auditing officials of the United States, (ii) auditing officials of this state, or (iii) state educational authorities from having access to student or other records which are necessary in connection with the audit and evaluation of federally supported or state-supported education programs or in connection with the enforcement of legal requirements which relate to such programs, except that, when collection of personally identifiable data is specifically authorized by law, any data collected by such officials with respect to individual students shall be protected in a manner which shall not permit the personal identification of students and their parents by other than the officials listed in this subsection. Personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of legal requirements.

(b) This section does not preclude or prohibit the disclosure of student records to any other person or entity which may be allowed to have access pursuant to the federal Family Educational Rights and Privacy Act of 1974, 20

U.S.C. 1232g, as such act existed on February 1, 2013, and regulations adopted thereunder.

(4) The Legislature finds and declares that the sharing of student data, records, and information among school districts, educational service units, learning communities, and the State Department of Education, to the fullest extent practicable and permitted by law, is vital to advancing education in this state. Whenever applicable law permits the sharing of such student data, records, and information, each school district, educational service unit, and learning community shall comply unless otherwise prohibited by law. The State Board of Education shall adopt and promulgate rules and regulations providing for and requiring the uniform sharing of student data, records, and information among school districts, educational service units, learning communities, and the department.

**Source:** Laws 1973, LB 370, § 2; Laws 1979, LB 133, § 1; Laws 1986, LB 642, § 1; R.S.1943, (1994), § 79-4,157; Laws 1996, LB 900, § 108; Laws 2009, LB549, § 10; Laws 2013, LB262, § 1.

#### **79-2,105 School files or records; provided upon student's transfer.**

A copy of a public or private school's files or records concerning a student, including academic material and any disciplinary material relating to any suspension or expulsion, shall be provided at no charge, upon request, to any public or private school to which the student transfers.

**Source:** Laws 1986, LB 642, § 2; R.S.1943, (1994), § 79-4,157.01; Laws 1996, LB 900, § 109; Laws 2009, LB549, § 11.

### (j) STUDENT PERSONNEL SERVICES

#### **79-2,106 Department; gifts, devises, and bequests; accept; loans; terms and conditions.**

The State Department of Education may accept, in trust, any gifts, devises, and bequests to be held and administered by the department for the purpose of making loans to worthy and needy students attending any college, university, or community college in this state. Such loans shall only be made to students whose parents are residents of Nebraska. Such loans shall be made on such terms and conditions as the State Board of Education shall prescribe or as may be imposed by the donor.

**Source:** Laws 1967, c. 522, § 1, p. 1743; Laws 1988, LB 802, § 16; R.S.1943, (1994), § 79-321.01; Laws 1996, LB 900, § 110.

#### **Cross References**

**State Board of Education**, duties with respect to devises, donations, or bequests, see section 79-318.

#### **79-2,107 Student personnel services; supervision.**

The State Board of Education shall provide supervision and leadership to assure that appropriate student personnel services are provided by the schools and other agencies of this state. Student personnel services shall include school guidance, counseling, testing services, and all other necessary and appropriate noninstructional services for students. The State Department of Education shall provide general supervision and coordination of student personnel services as

such services relate to instructional and educational services provided by schools and other agencies.

**Source:** Laws 1971, LB 660, § 2; Laws 1993, LB 348, § 11; R.S.1943, (1994), § 79-321.03; Laws 1996, LB 900, § 111.

(k) NEBRASKA STUDENT EXCHANGE ACT

**79-2,108 Repealed. Laws 1997, LB 347, § 59.**

**79-2,109 Repealed. Laws 1997, LB 347, § 59.**

**79-2,110 Repealed. Laws 1997, LB 347, § 59.**

**79-2,111 Repealed. Laws 1997, LB 347, § 59.**

**79-2,112 Repealed. Laws 1997, LB 347, § 59.**

**79-2,113 Repealed. Laws 1997, LB 347, § 59.**

(l) EQUAL OPPORTUNITY IN EDUCATION

**79-2,114 Act, how cited.**

Sections 79-2,114 to 79-2,124 shall be known and may be cited as the Nebraska Equal Opportunity in Education Act.

**Source:** Laws 1982, LB 628, § 1; R.S.1943, (1994), § 79-3001; Laws 1996, LB 900, § 118.

**Cross References**

For applicability to postsecondary educational institutions, see sections 85-9,166 to 85-9,176.

**79-2,115 Terms, defined.**

For purposes of the Nebraska Equal Opportunity in Education Act, unless the context otherwise requires:

(1) Educational institution means any public preschool, any public elementary school or secondary school, any educational service unit, and the State Department of Education; and

(2) Governing board means the duly constituted board of any public school system of elementary or secondary schools, any educational service unit board, and the State Board of Education.

**Source:** Laws 1982, LB 628, § 2; R.S.1943, (1994), § 79-3002; Laws 1996, LB 900, § 119.

**79-2,116 Legislative findings; discriminatory practices enumerated.**

The Legislature finds and declares that it shall be 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 1982, LB 628, § 3; R.S.1943, (1994), § 79-3003; Laws 1996, LB 900, § 120.

**79-2,117 Rules and regulations; institutions adopt; department; duties.**

The governing boards of educational institutions shall adopt and promulgate rules and regulations needed to carry out the Nebraska Equal Opportunity in Education Act. The State Department of Education shall provide such technical assistance in the development of these rules and regulations as may be requested by the governing board of any public school system of elementary or secondary schools. Governing boards of educational institutions, with the advice of staff, shall formulate activities and programs needed to carry out the act.

**Source:** Laws 1982, LB 628, § 4; R.S.1943, (1994), § 79-3004; Laws 1996, LB 900, § 121.

**79-2,118 Violation; complaint; filing; disposition; procedure; governing board; duties.**

(1) Any person aggrieved by a violation of the Nebraska Equal Opportunity in 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 1982, LB 628, § 5; R.S.1943, (1994), § 79-3005; Laws 1996, LB 900, § 122.

**79-2,119 Disposition of complaint; claimant; acceptance.**

If the claimant under section 79-2,118 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 1982, LB 628, § 6; R.S.1943, (1994), § 79-3006; Laws 1996, LB 900, § 123.

**79-2,120 Disposition of complaint; claimant; rejection; court action authorized; limitation.**

If the claimant under section 79-2,118 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 1982, LB 628, § 7; R.S.1943, (1994), § 79-3007; Laws 1996, LB 900, § 124.

**79-2,121 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 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 79-2,120. Such action must be filed within two years after the date of the filing of such complaint.

**Source:** Laws 1982, LB 628, § 8; R.S.1943, (1994), § 79-3008; Laws 1996, LB 900, § 125.

**79-2,122 Violation; complaint; prerequisite to other remedy.**

No original action asserting a violation of the Nebraska Equal Opportunity in 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 1982, LB 628, § 9; R.S.1943, (1994), § 79-3009; Laws 1996, LB 900, § 126.

**79-2,123 Nebraska Fair Employment Practice Act; complaint; applicability.**

The Nebraska Equal Opportunity in 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 Education Act, and filing a complaint pursuant to the Nebraska Equal Opportunity in Education Act constitutes a waiver of any right to seek relief pursuant to the Nebraska Fair Employment Practice Act.

**Source:** Laws 1982, LB 628, § 10; R.S.1943, (1994), § 79-3010; Laws 1996, LB 900, § 127.

**Cross References**

Nebraska Fair Employment Practice Act, see section 48-1125.

**79-2,124 Act, how construed.**

The Nebraska Equal Opportunity in Education Act does not prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes.

**Source:** Laws 1982, LB 628, § 11; R.S.1943, (1994), § 79-3011; Laws 1996, LB 900, § 128.

**(m) STUDENT FEES****79-2,125 Act, how cited.**

Sections 79-2,125 to 79-2,135 shall be known and may be cited as the Public Elementary and Secondary Student Fee Authorization Act.

**Source:** Laws 2002, LB 1172, § 1; Laws 2003, LB 249, § 2.

**79-2,126 Terms, defined.**

For purposes of the Public Elementary and Secondary Student Fee Authorization Act:

(1) Extracurricular activities means student activities or organizations which are supervised or administered by the school district, which do not count toward graduation or advancement between grades, and in which participation is not otherwise required by the school district;

(2) Governing body means a school board of any class of school district or an educational service unit board; and

(3) Postsecondary education costs means tuition and other fees associated with obtaining credit from a postsecondary educational institution. For a course in which students receive high school credit and for which they may also choose to apply for postsecondary education credit, the course shall be offered without charge for tuition, transportation, books, or other fees, except that if the student chooses to apply for postsecondary education credit, he or she may be charged tuition and other fees only associated with obtaining credits from a postsecondary educational institution.

**Source:** Laws 2002, LB 1172, § 2; Laws 2003, LB 249, § 3.

**79-2,127 Student fees authorized.**

Except as provided in section 79-2,133, a governing body may require and collect fees or other funds from or on behalf of students or require students to provide specialized equipment or specialized attire for any of the following purposes:

- (1) Participation in extracurricular activities;
- (2) Admission fees and transportation charges for spectators attending extracurricular activities;
- (3) Postsecondary education costs;
- (4) Transportation pursuant to sections 79-241, 79-605, and 79-611;
- (5) Copies of student files or records pursuant to section 79-2,104;
- (6) Reimbursement to the school district or educational service unit for school district or educational service unit property lost or damaged by the student;
- (7) Before-and-after-school or prekindergarten services offered pursuant to section 79-1104;
- (8) Summer school or night school;
- (9) Parking; and
- (10) Breakfast and lunch programs.

Except as provided in this section and sections 79-2,127.01, 79-2,131, and 79-2,132, a governing body shall not collect money pursuant to the Public Elementary and Secondary Student Fee Authorization Act from students.

**Source:** Laws 2002, LB 1172, § 3; Laws 2003, LB 249, § 4.

**79-2,127.01 Donations authorized.**

The Public Elementary and Secondary Student Fee Authorization Act does not limit the ability of a governing body to request donations of money, materials, equipment, or attire to defray costs if the request is made in such a way that it is clear that the request is not a requirement. The act does not prohibit a governing body from permitting students to supply materials for course projects.

**Source:** Laws 2003, LB 249, § 5.

**79-2,128 Extracurricular activities; incidentals furnished by students; authorized.**

A governing body may require students to furnish minor personal or minor consumable items for participation in extracurricular activities.

**Source:** Laws 2002, LB 1172, § 4; Laws 2003, LB 249, § 6.

**79-2,129 Nonspecialized attire furnished by students; authorized.**

A governing body may require students to furnish and wear nonspecialized attire meeting general written guidelines for specified courses and activities if the written guidelines are reasonably related to the course or activity.

**Source:** Laws 2002, LB 1172, § 5.

**79-2,130 Repealed. Laws 2003, LB 249, § 12.**

**79-2,131 Musical instruments furnished by students; fee authorized; when.**

A governing body may require students to furnish musical instruments for participation in optional music courses that are not extracurricular activities if the governing body provides for the use of a musical instrument without charge for any student who qualifies for free or reduced-price lunches under United States Department of Agriculture child nutrition programs. Participation in a free-lunch program or reduced-price lunch program is not required to qualify for free or reduced-price lunches for purposes of this section. This section does not require a governing body to provide for the use of a particular type of musical instrument for any student. For musical extracurricular activities, a governing body may require fees or require students to provide specialized equipment, such as musical instruments, or specialized attire consistent with the Public Elementary and Secondary Student Fee Authorization Act.

**Source:** Laws 2002, LB 1172, § 7; Laws 2003, LB 249, § 7.

**79-2,132 School store; authorized.**

The Public Elementary and Secondary Student Fee Authorization Act does not preclude operation of a school store in which students may purchase food, beverages, and personal or consumable items. A school store need not have a permanent physical presence and may consist of providing order forms for students to voluntarily purchase items from the school or another vendor.

**Source:** Laws 2002, LB 1172, § 8; Laws 2003, LB 249, § 8.

**79-2,133 Fee waiver policy.**

Each governing body shall establish a policy waiving the fees and providing the items otherwise required to be provided by students pursuant to subdivision (1) of section 79-2,127 for students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs. Participation in a free-lunch program or reduced-price lunch program is not required to qualify for free or reduced-price lunches for purposes of this section.

Each governing body may establish a policy for waiving fees or providing items otherwise required to be provided by students in other circumstances.

**Source:** Laws 2002, LB 1172, § 9; Laws 2003, LB 249, § 9.

**79-2,134 Student fee policy; hearing; procedure; contents.**

On or before August 1, 2002, and annually each year thereafter, each school board shall hold a public hearing at a regular or special meeting of the board on a proposed student fee policy, following a review of the amount of money collected from students pursuant to, and the use of waivers provided in, the student fee policy for the prior school year. The student fee policy shall be adopted by a majority vote of the school board and shall be published in the student handbook. The board shall provide a copy of the student handbook to every student, or to every household in which at least one student resides, at no cost to the student or household. The student fee policy shall include specific details regarding:

(1) The general written guidelines for any nonspecialized attire required for specified courses and activities;

(2) Any personal or consumable items a student will be required to furnish for participation in extracurricular activities;

(3) Any specialized equipment or attire which a student will be required to provide for any extracurricular activity;

(4) Any fees required from a student for participation in any extracurricular activity;

(5) Any fees required for postsecondary education costs;

(6) Any fees required for transportation costs pursuant to sections 79-241, 79-605, and 79-611;

(7) Any fees required for copies of student files or records pursuant to section 79-2,104;

(8) Any fees required for participation in before-and-after-school or prekindergarten services offered pursuant to section 79-1104;

(9) Any fees required for participation in summer school or night school;

(10) Any fees for breakfast and lunch programs; and

(11) The waiver policy pursuant to section 79-2,133.

No fee, specialized equipment or attire, or nonspecialized attire may be required pursuant to the Public Elementary and Secondary Student Fee Authorization Act unless the maximum dollar amount of the fee, the specifications for the specialized equipment or attire, or the specifications for the nonspecialized attire are specified in the student fee policy approved by the board. Reimbursement pursuant to subdivision (6) of section 79-2,127 for property lost or damaged by a student may be required without specification in the student fee policy.

**Source:** Laws 2002, LB 1172, § 10; Laws 2003, LB 249, § 10.

#### **79-2,135 Student fee fund.**

Each school district that collects money from students pursuant to subdivisions (1), (3), and (8) of section 79-2,127 shall establish a student fee fund. For purposes of this section, student fee fund means a separate school district fund not funded by tax revenue, into which all money collected from students pursuant to such subdivisions shall be deposited and from which money shall be expended for the purposes for which it was collected from students.

Funds collected from another school district for providing summer school or night school instruction to a school district's students and the related expenditures for providing such instruction shall be accounted for in the general fund of the school district providing the instruction.

**Source:** Laws 2002, LB 1172, § 11; Laws 2003, LB 67, § 3.

#### (n) PART-TIME ENROLLMENT

#### **79-2,136 Part-time enrollment; school board; duties; section, how construed.**

Each school board shall allow the part-time enrollment of students who are residents of the school district pursuant to subsections (1) and (2) of section 79-215 and who are also enrolled in a private, denominational, or parochial school or in a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements and shall establish policies and procedures for such part-time enrollment. Such policies and procedures may include provisions permitting the part-time enrollment of such students who are not residents of such school districts and may require part-time students to follow

school policies that apply to other students at any time the part-time student is present on school grounds or at a school-sponsored activity or athletic event. Part-time enrollment shall not entitle a student to transportation or transportation reimbursements pursuant to section 79-611. Nothing in this section shall be construed to exempt any student from the compulsory attendance provisions of sections 79-201 to 79-207.

**Source:** Laws 2006, LB 821, § 1; Laws 2010, LB1071, § 4.

(o) BULLYING PREVENTION AND EDUCATION

**79-2,137 School district; development and adoption of bullying prevention and education policy; review.**

(1) The Legislature finds and declares that:

(a) Bullying disrupts a school's ability to educate students; and

(b) Bullying threatens public safety by creating an atmosphere in which such behavior can escalate into violence.

(2) For purposes of this section, bullying means any ongoing pattern of physical, verbal, or electronic abuse on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or school-sponsored athletic events.

(3) On or before July 1, 2009, each school district as defined in section 79-101 shall develop and adopt a policy concerning bullying prevention and education for all students.

(4) The school district shall review the policy annually.

**Source:** Laws 2008, LB205, § 1.

(p) LINDSAY ANN BURKE ACT AND DATING VIOLENCE

**79-2,138 Act, how cited.**

Sections 79-2,138 to 79-2,142 shall be known and may be cited as the Lindsay Ann Burke Act.

**Source:** Laws 2009, LB63, § 43.

**79-2,139 Legislative findings and intent.**

The Legislature finds and declares that all students have a right to work and study in a safe, supportive environment that is free from harassment, intimidation, and violence. The Legislature further finds that when a student is a victim of dating violence, his or her academic life suffers and his or her safety at school is jeopardized. The Legislature therefor finds and declares that a policy to create a better understanding and awareness of dating violence shall be adopted by each school district. It is the intent of the Legislature to require each school district to establish a policy for educating staff and students about dating violence.

**Source:** Laws 2009, LB63, § 44.

**79-2,140 Terms, defined.**

For purposes of the Lindsay Ann Burke Act, unless the context otherwise requires:

(1) Dating partner means any person, regardless of gender, involved in an intimate relationship with another person primarily characterized by the expectation of affectionate involvement whether casual, serious, or long-term;

(2) Dating violence means a pattern of behavior where one person uses threats of, or actually uses, physical, sexual, verbal, or emotional abuse, to control his or her dating partner;

(3) Department means the State Department of Education; and

(4) School district has the same meaning as in section 79-101.

**Source:** Laws 2009, LB63, § 45.

**79-2,141 Model dating violence policy; department; school district; duties; publication; staff training; redress under other law.**

(1) On or before March 1, 2010, the department shall develop and adopt a model dating violence policy to assist school districts in developing policies for dating violence.

(2) On or before July 1, 2010, each school district shall develop and adopt a specific policy to address incidents of dating violence involving students at school, which shall be made a part of the requirements for accreditation in accordance with section 79-703. Such policy shall include a statement that dating violence will not be tolerated.

(3) To ensure notice of a school district's dating violence policy, the policy shall be published in any school district handbook, manual, or similar publication that sets forth the comprehensive rules, procedures, and standards of conduct for students at school.

(4) Each school district shall provide dating violence training to staff deemed appropriate by a school district's administration. The dating violence training shall include, but not be limited to, basic awareness of dating violence, warning signs of dating violence, and the school district's dating violence policy. The dating violence training may be provided by any school district or combination of school districts, an educational service unit, or any combination of educational service units.

(5) Each school district shall inform the students' parents or legal guardians of the school district's dating violence policy. If requested, the school district shall provide the parents or legal guardians a copy of the school district's dating violence policy and relevant information.

(6) This section does not prevent a victim of dating violence from seeking redress under any other available law, either civil or criminal, and does not create or alter any existing tort liability.

**Source:** Laws 2009, LB63, § 46.

**79-2,142 School district; incorporate dating violence education.**

Each school district shall incorporate dating violence education that is age-appropriate into the school program. Dating violence education shall include, but not be limited to, defining dating violence, recognizing dating violence warning signs, and identifying characteristics of healthy dating relationships.

**Source:** Laws 2009, LB63, § 47.

## (q) STATE SCHOOL SECURITY DIRECTOR

**79-2,143 State school security director; appointment.**

The position of state school security director is created within the State Department of Education. The Commissioner of Education shall appoint the director based on experience, knowledge, and skills in the field of school security.

**Source:** Laws 2014, LB923, § 1.  
Effective date July 18, 2014.

**79-2,144 State school security director; duties.**

The state school security director appointed pursuant to section 79-2,143 shall be responsible for providing leadership and support for safety and security for the public schools. Duties of the director include, but are not limited to:

(1) Collecting safety and security plans, required pursuant to rules and regulations of the State Department of Education relating to accreditation of schools, and other school security information from each school system in Nebraska. School districts shall provide the state school security director with the safety and security plans of the school district and any other security information requested by the director, but any plans or information submitted by a school district may be withheld by the department pursuant to subdivision (8) of section 84-712.05;

(2) Recommending minimum standards for school security on or before January 1, 2016, to the State Board of Education;

(3) Conducting an assessment of the security of each public school building, which assessment shall be completed by August 31, 2017;

(4) Identifying deficiencies in school security based on the minimum standards adopted by the State Board of Education and making recommendations to school boards for remedying such deficiencies;

(5) Establishing security awareness and preparedness tools and training programs for public school staff;

(6) Establishing research-based model instructional programs for staff, students, and parents to address the underlying causes for violent attacks on schools;

(7) Overseeing suicide awareness and prevention training in public schools pursuant to section 79-2,146;

(8) Establishing tornado preparedness standards which shall include, but not be limited to, ensuring that every school conduct at least two tornado drills per year; and

(9) Responding to inquiries and requests for assistance relating to school security from private, denominational, and parochial schools.

**Source:** Laws 2014, LB923, § 2.  
Effective date July 18, 2014.

**79-2,145 Rules and regulations.**

The State Board of Education, based on the recommendations of the state school security director appointed pursuant to section 79-2,143, may adopt and

promulgate rules and regulations establishing minimum school security standards on or before July 1, 2016.

**Source:** Laws 2014, LB923, § 3.  
Effective date July 18, 2014.

**79-2,146 Suicide awareness and prevention training.**

(1) Beginning in school year 2015-16, all public school nurses, teachers, counselors, school psychologists, administrators, school social workers, and any other appropriate personnel shall receive at least one hour of suicide awareness and prevention training each year. This training shall be provided within the framework of existing inservice training programs offered by the State Department of Education or as part of required professional development activities.

(2) The department, in consultation with organizations including, but not limited to, the Nebraska State Suicide Prevention Coalition, the Nebraska chapter of the American Foundation for Suicide Prevention, the Behavioral Health Education Center of Nebraska, the National Alliance on Mental Illness Nebraska, and other organizations and professionals with expertise in suicide prevention, shall develop a list of approved training materials to fulfill the requirements of subsection (1) of this section. Such materials shall include training on how to identify appropriate mental health services, both within the school and also within the larger community, and when and how to refer youth and their families to those services. Such materials may include programs that can be completed through self-review of suitable suicide prevention materials.

(3) The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2014, LB923, § 4.  
Effective date July 18, 2014.

**ARTICLE 3**

**STATE DEPARTMENT OF EDUCATION**

**Cross References**

Funds, services, commodities, and equipment made available by federal government to be channeled through office of Commissioner of Education, see section 81-910 et seq.

**(a) DEPARTMENTAL STRUCTURE AND DUTIES**

Section

- 79-301. State Department of Education; State Board of Education; Commissioner of Education; powers; duties; vacancy, absence, or incapacity; deputy commissioner; duties.
- 79-302. Regulations; reports; duty of department to prescribe.
- 79-303. State Department of Education Revolving Fund; created; use; investment.

**(b) COMMISSIONER OF EDUCATION**

- 79-304. Commissioner of Education; qualifications.
- 79-305. Commissioner of Education; office; powers; duties.
- 79-306. Commissioner of Education; State Department of Education; administrative head; duties.
- 79-307. School districts; numbering.
- 79-308. Teacher's institutes and conferences; organization; supervision.
- 79-309. Public schools; duty to visit and supervise.
- 79-309.01. Teacher performance pay; local collective-bargaining agreements; data; Commissioner of Education; duties; school district; use of funds; return of funds.

## Section

## (c) STATE BOARD OF EDUCATION

- 79-310. State Board of Education; members; election.
- 79-311. State Board of Education; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
- 79-312. State Board of Education districts; population figures and maps; basis.
- 79-313. State Board of Education; members; qualifications.
- 79-314. State Board of Education; members; vacancies; how filled.
- 79-315. State Board of Education; members; officers; Commissioner of Education; appointment; term; removal; seal; powers.
- 79-316. State Board of Education; members; impeachment; grounds.
- 79-317. State Board of Education; meetings; open to public; exceptions; compensation and expenses.
- 79-318. State Board of Education; powers; duties.
- 79-319. State Board of Education; additional powers; enumerated.
- 79-320. State Board of Education; liability insurance; for whom.
- 79-321. State Board of Education; State Board of Vocational Education; assumption of powers and duties; Commissioner of Education; duties.

## (a) DEPARTMENTAL STRUCTURE AND DUTIES

**79-301 State Department of Education; State Board of Education; Commissioner of Education; powers; duties; vacancy, absence, or incapacity; deputy commissioner; duties.**

(1) The State Department of Education provided for in Article VII, section 2, of the Constitution of Nebraska shall consist of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.

(2) The State Board of Education, acting as a unit, shall be the policy-forming, planning, and evaluative body for the state school program. Except in the appointment of a Commissioner of Education, the board shall deliberate and take action with the professional advice and counsel of the Commissioner of Education.

(3) The Commissioner of Education shall be the executive officer of the State Board of Education and the administrative head of the professional, technical, and clerical staff of the State Department of Education. The commissioner shall act under the authority of the State Board of Education. The commissioner shall have the responsibility for carrying out the requirements of law and of board policies, standards, rules, and regulations and for providing the educational leadership and services deemed necessary by the board for the proper conduct of the state school program. In the event of vacancy in office or the absence or incapacity of the Commissioner of Education, the deputy commissioner shall carry out all the duties imposed by law upon the commissioner.

**Source:** Laws 1953, c. 320, § 1, p. 1053; Laws 1971, LB 220, § 1; R.S.1943, (1994), § 79-321; Laws 1996, LB 900, § 129; Laws 1997, LB 347, § 6.

## Cross References

Surplus property of federal government, assist public schools in obtaining, see sections 81-910 to 81-912.

**79-302 Regulations; reports; duty of department to prescribe.**

The State Department of Education shall prescribe forms for making all reports and regulations for all proceedings under the general school laws of the

state. The department may establish procedures for submission of forms on electronic media or via telecommunications systems. The department may require the use of a personally identifiable number, which it will assign, on electronic data submissions in lieu of requiring authorized signatures on paper forms.

**Source:** Laws 1881, c. 78, subdivision VIII, § 5, p. 363; R.S.1913, § 6902; C.S.1922, § 6478; C.S.1929, § 79-1605; R.S.1943, § 79-1608; Laws 1949, c. 256, § 28, p. 701; Laws 1965, c. 513, § 1, p. 1633; Laws 1993, LB 348, § 10; R.S.1943, (1994), § 79-307; Laws 1996, LB 900, § 130.

Under former law, authority to make rules was an unconstitutional delegation of legislative authority. *School Dist. No. 39 of Washington County v. Decker*, 159 Neb. 693, 68 N.W.2d 354 (1955).

**79-303 State Department of Education Revolving Fund; created; use; investment.**

(1) The State Department of Education may provide for a system of charges for services rendered by the administrative support programs of the department to all other programs within the department. Such charges received for administrative support services shall be credited to the State Department of Education Revolving Fund, which fund is hereby created. Expenditures shall be made from such fund to finance the operation of the administrative support programs of the department in accordance with appropriations made by the Legislature.

(2) The Director of Administrative Services, upon receipt of proper vouchers approved by the Commissioner of Education, shall issue warrants out of the State Department of Education Revolving 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 1978, LB 962, § 1; Laws 1995, LB 7, § 88; R.S.Supp., 1995, § 79-340; Laws 1996, LB 900, § 131.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**(b) COMMISSIONER OF EDUCATION**

**79-304 Commissioner of Education; qualifications.**

The Commissioner of Education shall (1)(a) be a person of superior educational attainments, (b) have had many years of experience, (c) have demonstrated personal and professional leadership in the administration of public education, and (d) be eligible to qualify for the highest grade of school administrator certificate currently issued in the state or (2) possess a combination of education, skills, administrative experiences in public education, and other such qualifications as determined by the State Board of Education.

**Source:** Laws 1953, c. 320, § 11, p. 1059; R.S.1943, (1994), § 79-331; Laws 1996, LB 900, § 132; Laws 2009, LB549, § 12.

**79-305 Commissioner of Education; office; powers; duties.**

The Commissioner of Education as the executive officer of the State Board of Education shall: (1) Have an office in the city of Lincoln in which shall be housed the records of the State Board of Education and the State Department of Education, which records shall be subject at all times to examination by the Governor, the Auditor of Public Accounts, and committees of the Legislature; (2) keep the board currently informed and advised on the operation and status of all aspects of the educational program of the state under its jurisdiction; (3) prepare a budget for financing the activities of the board and the department, including the internal operation and maintenance of the department, and upon approval by the board administer the same in accordance with appropriations by the Legislature; (4) voucher the expenses of the department according to the rules and regulations prescribed by the board; (5) be responsible for promoting the efficiency, welfare, and improvement in the school system in the state and for recommending to the board such policies, standards, rules, and regulations as may be necessary to attain these purposes; (6) promote educational improvement by (a) outlining and carrying out plans and conducting essential activities for the preparation of curriculum and other materials, (b) providing necessary supervisory and consultative services, (c) holding conferences of professional educators and other civic leaders, (d) conducting research, experimentation, and evaluation of school programs and activities, and (e) in other ways assisting in the development of effective education in the state; (7) issue teachers' certificates according to the provisions of law and the rules and regulations prescribed by the board; and (8) attend or, in case of necessity, designate a representative to attend all meetings of the board except when the order of business of the board is the selection of a Commissioner of Education. None of the duties prescribed in this section or in section 79-306 prevent the commissioner from exercising such other duties as in his or her judgment and with the approval of the board are necessary to the proper and legal exercise of his or her obligations.

**Source:** Laws 1953, c. 320, § 12, p. 1059; Laws 1979, LB 289, § 1; R.S.1943, (1994), § 79-332; Laws 1996, LB 900, § 133; Laws 2009, LB549, § 13.

#### Cross References

#### Constitutional provisions:

Appointment, see Article VII, section 4, Constitution of Nebraska.

Board of Trustees of the Nebraska State Colleges, ex officio member, see Article VII, section 13, Constitution of Nebraska.

State Board of Vocational Education, executive officer, see section 79-740.

### **79-306 Commissioner of Education; State Department of Education; administrative head; duties.**

The Commissioner of Education shall be the administrative head of the State Department of Education and as such shall (1) have the authority to delegate administrative and supervisory functions to the members of the staff of the department, (2) establish and maintain an appropriate system of personnel administration for the department, (3) prescribe such administrative rules and regulations as are necessary for the proper execution of duties and responsibilities placed upon him or her, (4) perform all duties prescribed by the Legislature in accordance with the policies adopted by the State Board of Education, and (5) faithfully execute the policies and directives of the State Board of Education.

**Source:** Laws 1953, c. 320, § 13, p. 1060; R.S.1943, (1994), § 79-333; Laws 1996, LB 900, § 134; Laws 2009, LB549, § 14.

**79-307 School districts; numbering.**

The Commissioner of Education shall assign a number to each public school district within this state.

**Source:** Laws 1971, LB 528, § 1; R.S.1943, (1987), § 79-312.01; Laws 1988, LB 1142, § 3; R.S.1943, (1994), § 79-301; Laws 1996, LB 900, § 135.

**79-308 Teacher's institutes and conferences; organization; supervision.**

The Commissioner of Education shall organize institutes and conferences at such times and places as he or she deems practicable. He or she shall, as far as practicable, attend such institutes and conferences, provide proper instructors for the same, and in other ways seek to improve the efficiency of teachers and advance the cause of education in the state.

**Source:** Laws 1881, c. 78, subdivision VIII, § 2, p. 363; R.S.1913, § 6899; C.S.1922, § 6475; C.S.1929, § 79-1602; R.S.1943, § 79-1605; Laws 1949, c. 256, § 25, p. 700; R.S.1943, (1994), § 79-304; Laws 1996, LB 900, § 136.

**79-309 Public schools; duty to visit and supervise.**

The Commissioner of Education shall visit or cause to be visited such schools as he or she may have it in his or her power to do and witness and advise with teachers and school officers upon the manner in which they are conducted.

**Source:** Laws 1881, c. 78, subdivision VIII, § 3, p. 363; R.S.1913, § 6900; C.S.1922, § 6476; C.S.1929, § 79-1603; R.S.1943, § 79-1606; Laws 1949, c. 256, § 26, p. 701; R.S.1943, (1994), § 79-305; Laws 1996, LB 900, § 137.

**79-309.01 Teacher performance pay; local collective-bargaining agreements; data; Commissioner of Education; duties; school district; use of funds; return of funds.**

(1)(a) Beginning in 2016, the Commissioner of Education shall annually collect data from each school district prior to February 25 and determine whether at least seventy-five percent of the school districts have included a system for distributing apportionment funds attributable to income from solar or wind agreements on school lands for teacher performance pay within such districts' local collective-bargaining agreements for the ensuing school fiscal year.

(b)(i) If the seventy-five percent requirement has been met for the year, the Commissioner of Education shall use the separate accounting provided by the State Treasurer under subdivision (1)(b) of section 79-1035 to determine the amount of the apportionment to each school district under section 79-1035 that is attributable to income from solar or wind agreements on school lands. The commissioner shall notify each school district of such amount within five days after certification of the apportionment required pursuant to subsection (3) of section 79-1035. Each school district shall use the amount of apportionment funds specified in the notice provided by the commissioner for the purpose of teacher performance pay. Such amount shall be used as a supplement to the salary schedule as provided in local collective-bargaining agreements. For purposes of distribution of such funds only, the Legislature finds that teacher

performance pay measurements, criteria, and payout amounts are mandatory topics of collective bargaining. If a school district has not included a system for distributing apportionment funds attributable to income from solar or wind agreements on school lands for teacher performance pay within its local collective-bargaining agreement, the amount of apportionment funds specified in the notice provided by the commissioner shall be returned to the State Treasurer within one month of receipt of such funds. The State Treasurer shall immediately credit any funds returned under this section to the temporary school fund. Any funds returned under this section shall be redistributed from the temporary school fund in the following year and shall no longer be designated as income attributable to solar or wind agreements on school lands.

(ii) If the seventy-five percent requirement has not been met for the year, then subdivision (1)(b)(i) of this section shall not apply for that year.

(2) If the seventy-five percent requirement has not been met in 2016, 2017, or 2018, then this section shall not apply in 2019 or any year thereafter.

(3) For purposes of this section:

(a) Agreement means any lease, easement, covenant, or other such contractual arrangement; and

(b) Teacher performance pay means a systematic process for measuring teachers' performance and linking the measurements to changes in teacher pay. Indicators of teacher performance may include improving professional skills and knowledge, classroom performance or instructional behavior, and instructional outcomes. Teacher performance pay may include predetermined bonus amounts and payout criteria.

**Source:** Laws 2010, LB1014, § 1; Laws 2012, LB828, § 19.

### (c) STATE BOARD OF EDUCATION

#### **79-310 State Board of Education; members; election.**

The State Board of Education shall be composed of eight members who shall be elected as provided in section 32-511. The Commissioner of Education shall not be a member of the State Board of Education.

**Source:** Laws 1953, c. 320, § 2, p. 1054; Laws 1967, c. 527, § 1, p. 1750; Laws 1991, LB 619, § 1; Laws 1994, LB 76, § 589; R.S.1943, (1994), § 79-322; Laws 1996, LB 900, § 138; Laws 2009, LB549, § 15.

#### **Cross References**

##### **Constitutional provisions:**

Creation, Article VII, section 3, Constitution of Nebraska.

Membership, requirements, Article VII, section 3, Constitution of Nebraska.

**Filing fees,** see section 32-608.

**Nomination,** nonpolitical, see section 32-609.

#### **79-311 State Board of Education; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.**

(1) For the purpose of section 79-310, the state is divided into eight districts. Each district shall be entitled to one member on the board.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps ED11-1, ED11-2, ED11-3,

ED11-4, ED11-5, ED11-5A, ED11-6, ED11-7, and ED11-8, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB702.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

**Source:** Laws 1967, c. 527, § 2, p. 1751; Laws 1971, LB 735, § 1; Laws 1981, LB 554, § 1; Laws 1991, LB 619, § 2; R.S.1943, (1994), § 79-322.01; Laws 1996, LB 900, § 139; Laws 2001, LB 856, § 2; Laws 2011, LB702, § 1.

**79-312 State Board of Education districts; population figures and maps; basis.**

For purposes of section 79-311, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

**Source:** Laws 1971, LB 735, § 2; Laws 1981, LB 554, § 2; Laws 1991, LB 619, § 3; R.S.1943, (1994), § 79-322.02; Laws 1996, LB 900, § 140; Laws 2001, LB 856, § 3; Laws 2011, LB702, § 2.

**79-313 State Board of Education; members; qualifications.**

No person shall be eligible to membership on the State Board of Education (1) who is actively engaged in the teaching profession, (2) who is a holder of any state office or a member of a state board or commission unless the board or commission is limited to an advisory capacity, or (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election.

**Source:** Laws 1953, c. 320, § 3, p. 1054; Laws 1994, LB 76, § 590; R.S.1943, (1994), § 79-323; Laws 1996, LB 900, § 141; Laws 2001, LB 797, § 8; Laws 2009, LB549, § 16.

**79-314 State Board of Education; members; vacancies; how filled.**

Vacancies occurring on the State Board of Education between one general election and another shall be filled by appointment by the Governor from among qualified persons residing in the district in which the vacancy occurs. Such appointments shall be in writing and continue for the unexpired term and

until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

**Source:** Laws 1953, c. 320, § 4, p. 1054; Laws 1957, c. 124, § 24, p. 436; R.S.1943, (1994), § 79-324; Laws 1996, LB 900, § 142.

**79-315 State Board of Education; members; officers; Commissioner of Education; appointment; term; removal; seal; powers.**

The State Board of Education shall elect from its own membership a president and a vice president and otherwise organize itself for the conduct of business. It shall then consider the appointment of and contracting for a Commissioner of Education whose appointment may be for a period of three years. During such term the commissioner may be removed from office for the causes set forth in subdivision (2) of section 79-318. The commissioner shall be the secretary of the board. The board shall reorganize itself each two years at its first meeting in the next calendar year following a general election. The board shall constitute a body corporate to be known as the State Board of Education, and as such it shall adopt and make use of a common seal and may receive, hold, and use money and real and personal property for the benefit of the school system of the state.

**Source:** Laws 1953, c. 320, § 5, p. 1055; Laws 1969, c. 707, § 1, p. 2711; Laws 1971, LB 525, § 1; Laws 1982, LB 654, § 1; R.S.1943, (1994), § 79-325; Laws 1996, LB 900, § 143.

**79-316 State Board of Education; members; impeachment; grounds.**

Members of the State Board of Education shall be liable to impeachment in the same manner and on the same grounds as other state officers.

**Source:** Laws 1953, c. 320, § 6, p. 1055; Laws 1971, LB 421, § 1; R.S.1943, (1994), § 79-326; Laws 1996, LB 900, § 144.

**79-317 State Board of Education; meetings; open to public; exceptions; compensation and expenses.**

(1) The State Board of Education shall meet regularly and periodically in the office of the State Department of Education at least four times annually and at such other times and places as it may determine necessary for the proper and efficient conduct of its duties. All meetings shall be called in accordance with this section and the Open Meetings Act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such closed sessions as the board may direct in accordance with the Open Meetings Act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his or her designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1953, c. 320, § 7, p. 1055; Laws 1971, LB 421, § 2; Laws 1975, LB 325, § 7; Laws 1981, LB 204, § 153; R.S.1943, (1994), § 79-327; Laws 1996, LB 900, § 145; Laws 2004, LB 821, § 24; Laws 2009, LB549, § 17.

Open Meetings Act, see section 84-1407.

**79-318 State Board of Education; powers; duties.**

The State Board of Education shall:

- (1) Appoint and fix the compensation of the Commissioner of Education;
- (2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;
- (3) Upon recommendation of the commissioner, appoint and fix the compensation of a deputy commissioner and all professional employees of the board;
- (4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;
- (5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner:
  - (a) Provide supervisory and consultation services to the schools of the state;
  - (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs;
  - (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section;
  - (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable;
  - (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress;
  - (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state;
  - (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators;
  - (h) approve certificated-employee evaluation policies and procedures developed by

school districts and educational service units; and (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;

(6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that educational service units remain responsive to school district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;

(7) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(8) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(9) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;

(10) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(11) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(12) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of public, private, denominational, or parochial school students; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of public, private, denominational, or parochial school students, when such vehicles are owned, operated, or owned and operated by any public, private, denominational, or parochial school or privately owned or operated under contract with any such school in this state, except for vehicles owned by individuals operating a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(13) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation,

or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so;

(14) Accept, in order to administer the Interstate Compact on Educational Opportunity for Military Children, any devise, donation, or bequest received by the State Department of Education pursuant to section 79-2206; and

(15) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

**Source:** Laws 1953, c. 320, § 8, p. 1056; Laws 1955, c. 306, § 1, p. 947; Laws 1959, c. 383, § 1, p. 1328; Laws 1967, c. 528, § 2, p. 1753; Laws 1969, c. 707, § 2, p. 2712; Laws 1969, c. 708, § 1, p. 2716; Laws 1971, LB 292, § 5; Laws 1974, LB 863, § 8; Laws 1977, LB 205, § 1; Laws 1979, LB 322, § 37; Laws 1981, LB 316, § 1; Laws 1981, LB 545, § 27; Laws 1984, LB 928, § 2; Laws 1984, LB 994, § 6; Laws 1986, LB 1177, § 36; Laws 1987, LB 688, § 11; Laws 1989, LB 15, § 1; Laws 1989, LB 285, § 141; Laws 1990, LB 980, § 34; Laws 1994, LB 858, § 3; R.S.1943, (1994), § 79-328; Laws 1996, LB 900, § 146; Laws 1999, LB 813, § 6; Laws 2009, LB549, § 18; Laws 2010, LB1071, § 5; Laws 2011, LB575, § 8; Laws 2012, LB782, § 148; Laws 2013, LB222, § 32.

#### Cross References

**Gifts, devises, and bequests,** loans to needy students, see section 79-2,106.

**Interstate Compact on Educational Opportunity for Military Children,** see section 79-2201.

**Private, denominational, or parochial schools,** election not to meet approval or accreditation requirements, see section 79-1601 et seq.

The state, having a high responsibility for the education of its citizens, has the power to impose reasonable regulations for the control and duration of basic education. Parents have a right to send their children to private schools but do not have the right to be completely unfettered by reasonable government regulations as to the quality of the education furnished and the maintenance of minimum standards. *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 207 Neb. 802, 301 N.W.2d 571 (1981).

Adequate standards are provided by this section to authorize transfer of land from a nonaccredited to an accredited high

school district. *De Jonge v. School Dist. of Bloomington*, 179 Neb. 539, 139 N.W.2d 296 (1966).

Matters to be considered in promulgating rules and regulations are specified. *School Dist. No. 8 of Sherman County v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

Standards were not effective until filed with Secretary of State. *School Dist. No. 228 of Holt County v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

This section was not applicable to supply standards in cases arising before its enactment. *School Dist. No. 39 of Washington County v. Decker*, 159 Neb. 693, 68 N.W.2d 354 (1955).

### 79-319 State Board of Education; additional powers; enumerated.

The State Board of Education has the authority to (1) provide for the education of and approve special educational facilities and programs provided in the public schools for children with disabilities, (2) act as the state's authority for the approval of all types of veterans educational programs and have jurisdiction over the administration and supervision of on-the-job and apprenticeship training, on-the-farm training, and flight training programs for

veterans which are financially supported in whole or in part by the federal government, (3) supervise and administer any educational or training program established within the state by the federal government, except postsecondary education in approved colleges, (4) coordinate educational activities in the state that pertain to elementary and secondary education and such other educational programs as are placed by statute under the jurisdiction of the board, (5) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants, (6) publish, from time to time, directories of schools and educators, pamphlets, curriculum guides, rules and regulations, handbooks on school constitution and other matters of interest to educators, and similar publications. Such publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing. The proceeds of such sale shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund which may be used by the State Department of Education for the purpose of printing and distributing further such publications on a nonprofit basis. Copies of such publications shall be provided to the Nebraska Publications Clearinghouse pursuant to section 51-413, and (7) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, rent or lease space outside the State Capitol.

**Source:** Laws 1953, c. 320, § 9, p. 1058; Laws 1959, c. 384, § 1, p. 1332; Laws 1961, c. 395, § 1, p. 1202; Laws 1963, c. 469, § 5, p. 1504; Laws 1972, LB 1284, § 20; Laws 1974, LB 863, § 9; Laws 1975, LB 359, § 2; Laws 1976, LB 733, § 1; Laws 1985, LB 417, § 1; Laws 1986, LB 997, § 7; R.S.1943, (1994), § 79-329; Laws 1996, LB 900, § 147; Laws 2009, LB549, § 19; Laws 2014, LB967, § 4. Effective date April 3, 2014.

**79-320 State Board of Education; liability insurance; for whom.**

The State Board of Education has the authority to purchase and maintain insurance, on behalf of the Commissioner of Education or any person who is or was a member, officer, employee, or agent of the State Board of Education, 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 State Board of Education would have the power to indemnify the individual against such liability under any other provision of law.

**Source:** Laws 1977, LB 146, § 1; Laws 1981, LB 472, § 1; R.S.1943, (1994), § 79-329.01; Laws 1996, LB 900, § 148.

**79-321 State Board of Education; State Board of Vocational Education; assumption of powers and duties; Commissioner of Education; duties.**

(1) The State Board of Education shall replace the State Board of Vocational Education and, when acting as the State Board of Vocational Education, shall assume the duties and powers provided in sections 79-738 to 79-744.

(2) The Commissioner of Education shall be the executive officer of the State Board of Vocational Education.

**Source:** Laws 1953, c. 320, § 10, p. 1059; Laws 1990, LB 1090, § 3; Laws 1993, LB 348, § 12; R.S.1943, (1994), § 79-330; Laws 1996, LB 900, § 149; Laws 1998, Spec. Sess., LB 1, § 10.

#### ARTICLE 4

### SCHOOL ORGANIZATION AND REORGANIZATION

#### (a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS FOR REORGANIZATION OF SCHOOL DISTRICTS

##### Section

- 79-401. Reorganization of school districts; findings; intent; goals.  
 79-402. Reorganization of school districts; requirements.  
 79-403. Creation of new district; requirements.  
 79-404. Merger of Class I districts within boundaries of Class VI district; not prohibited.

#### (b) LEGAL STATUS, FORMATION, AND TERRITORY

- 79-405. District; body corporate; powers; name.  
 79-406. Class II school district creation; board.  
 79-407. Class III school district; boundaries; body corporate; powers.  
 79-408. Class IV school district; boundaries; body corporate; powers; retirement plans; restrictions.  
 79-409. Class V school district; body corporate; powers.  
 79-410. Class VI school district; classification.  
 79-411. Class VI school district; junior-senior high school district created; procedure; vote required.  
 79-412. Districts; bordering on river constituting state boundary line; boundary.

#### (c) PETITION PROCESS FOR REORGANIZATION

- 79-413. School districts; creation from other school districts; change of boundaries; affiliation; conditions; petition method; procedure.  
 79-414. Districts; change in territory; list of voters; accompany petition.  
 79-415. Changes in boundaries; creation of new district; affiliation; how initiated.  
 79-416. School districts; merger or affiliation; petition.  
 79-417. Class I school district; merger with certain Class I school districts; petition.  
 79-418. Changes in boundaries; creation of new school district; petition; requirements.  
 79-419. Districts; creation from other districts; petition; contents.  
 79-420. School districts; creation from other school districts; appointment of first school board; term; election of successors.  
 79-421. Territory not included in organized district; county clerk; notice; hearing.  
 79-422. Change in boundary lines; affiliation; bonded indebtedness; treatment.  
 79-423. School district boundaries; legal voters; vote at district meetings or district elections.  
 79-424. Petition or plan for affiliation; procedures applicable.  
 79-425. Petition or plan for affiliation; resubmission; procedure.  
 79-426. Petition or plan for affiliation; state committee; powers and duties.  
 79-427. Petition or plan for affiliation; contents.  
 79-428. Repealed. Laws 1997, LB 347, § 59; Laws 1997, LB 806, § 69.  
 79-429. Repealed. Laws 1997, LB 347, § 59; Laws 1997, LB 806, § 69.  
 79-430. Repealed. Laws 1997, LB 347, § 59; Laws 1997, LB 806, § 69.  
 79-431. Affiliation; districts subject to dissolution; merger authorized; state committee; duties; districts which become Class I districts and dissolved districts; actions required.

## SCHOOL ORGANIZATION AND REORGANIZATION

### Section

#### (d) REORGANIZATION OF SCHOOL DISTRICTS ACT

- 79-432. Act, how cited.
- 79-433. Terms, defined.
- 79-434. Reorganization of school districts; methods.
- 79-435. State Committee for the Reorganization of School Districts; members; appointment; term; qualifications; expenses.
- 79-436. State committee; officers; meetings; quorum.
- 79-437. Repealed. Laws 1999, LB 272, § 118.
- 79-438. Repealed. Laws 1999, LB 272, § 118.
- 79-438.01. Repealed. Laws 1999, LB 272, § 118.
- 79-439. State committee; duties.
- 79-440. Repealed. Laws 1999, LB 272, § 118.
- 79-441. State committee; plan of reorganization; review.
- 79-442. State committee; plan of reorganization; public hearings; notice.
- 79-443. State committee; plan of reorganization; contents.
- 79-444. Plan of reorganization; territory included; state committee; procedure.
- 79-445. Plan of reorganization; state committee; disapproval; effect.
- 79-446. Plan of reorganization; approval; special election.
- 79-447. Plan of reorganization; special election; notice; contents; conduct; separate voting units; approval of plan.
- 79-448. Plan of reorganization; disapproval of plan; continuance of efforts; revised plan; approval.
- 79-449. Plan of reorganization; two or more districts; indebtedness.
- 79-450. Plan of reorganization; adoption; county clerk; duties.
- 79-451. New school district; state committee; appoint board; members; appointment; election; terms; duties.

#### (e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS

- 79-452. Dissolution of Class I or II school district; petition; sufficient signatures; effect; plan of reorganization.
- 79-453. State committee; review proposal; approve or disapprove; effect.
- 79-454. Proposal; state committee; approve; election; notice.
- 79-455. Proposal; election; approve; county clerk; order; certificate; filing; appeal.

#### (f) FREEHOLDERS' PETITIONS

- 79-456. Repealed. Laws 1997, LB 347, § 59.
- 79-457. Repealed. Laws 1997, LB 347, § 59.
- 79-458. School district; tract of land set off from district; petition; conditions; procedure; appeal.
- 79-458.01. Property encapsulated by school district; transfer; procedure.
- 79-459. Repealed. Laws 1997, LB 347, § 59.

#### (g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION AND ANNEXATION OF SCHOOL DISTRICTS

- 79-460. Repealed. Laws 1999, LB 272, § 118.
- 79-461. Repealed. Laws 1999, LB 272, § 118.
- 79-462. Repealed. Laws 1999, LB 272, § 118.
- 79-463. Repealed. Laws 1999, LB 272, § 118.
- 79-464. Repealed. Laws 1999, LB 272, § 118.
- 79-465. Repealed. Laws 1999, LB 272, § 118.
- 79-466. Repealed. Laws 1999, LB 272, § 118.
- 79-467. District; reduced taxable valuation by purchase or appropriation by federal government; exclusion of such land; formation of new district.
- 79-468. City of second class or village; merger with city of primary class; existing school districts; merger; obligations; how discharged.
- 79-469. City of second class or village; merger with city of primary class; officers of merged school district; duties.
- 79-470. Contract for instruction; merger; effect; limitation; dissolution.
- 79-471. Dissolving district; expenses incurred by school district; charge against district and taxable property therein.

## SCHOOLS

### Section

- 79-472. Class II school district; discontinue high school; affiliation; vote; Class I school district; board; election.
- 79-473. Class III school district; annexed school district territory; negotiation; election; question on ballot.
- 79-474. School district merged into Class III school district; bonded indebtedness; liability.
- 79-475. School district merged into Class III or IV school district; effective; when.
- 79-476. Class V school district; property subject to school tax; management of affairs of district.
- 79-477. Class VI school district; discontinuance of district; vote required; notice.
- 79-478. Class VI school district; disapproval by State Board of Education; Class I school district; withdrawal; vote required.

### (h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS

- 79-479. Change of boundaries; order; conditions; transfer of assets and liabilities.
- 79-480. Districts; changes in boundaries; filing of petition; evidence.
- 79-481. Repealed. Laws 1999, LB 272, § 118.
- 79-482. Repealed. Laws 1999, LB 272, § 118.
- 79-483. Repealed. Laws 1999, LB 272, § 118.
- 79-484. Repealed. Laws 1999, LB 272, § 118.
- 79-485. New districts; formation from dissolved district possessing property; property and indebtedness; how apportioned.
- 79-486. New districts; proceeds of sale and funds of old district; how apportioned.
- 79-487. Districts; division; part taken over by United States; sale of schoolhouse.
- 79-488. Districts; reduction in size through acquisition of land by United States; attachment of remainder; apportionment of funds.
- 79-489. New districts; formation from old districts; general indebtedness; duty to consider in dividing property.
- 79-490. Districts; change in boundary lines; map; report; adjustments in tax list.
- 79-491. Districts; presumption of organization.
- 79-492. Class I school district; organization of new district; first officers; term.
- 79-493. Class I or Class II school district; new district officers; acceptance of office.
- 79-494. Class I or Class II school district; new school district; when deemed organized.
- 79-495. Class I or Class II school district; new district; failure to organize; dissolution for failure to organize.
- 79-496. Class IV or Class V school district; obligations of merged districts; assumption.
- 79-497. Division of districts within city of primary or metropolitan class; assets and liabilities; adjustment.

### (i) DEPOPULATED DISTRICTS

- 79-498. Depopulated districts; attachment to adjoining districts; notice; when authorized; waiver of requirements; findings; appeal; distribution of assets.
- 79-499. Class II or Class III school district; membership requirements; cooperative programs; when required; plan; contract for services; effect.

### (j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS

- 79-4,100. Terms, defined.
- 79-4,101. Additional terms, defined.
- 79-4,102. Affiliated district; student; treatment.
- 79-4,103. Advisory committees; created; members; terms; duties.
- 79-4,104. Statutes on affiliation; held unconstitutional; effect.

### (k) REORGANIZATION STUDIES

- 79-4,105. Repealed. Laws 2003, LB 67, § 34.
- 79-4,106. Repealed. Laws 2003, LB 67, § 34.
- 79-4,107. Repealed. Laws 2001, LB 313, § 5.

## Section

## (l) UNIFIED SYSTEM

- 79-4,108. Unified system; interlocal agreement; contents; application; procedure; effect.
- 79-4,109. Class I district; reaffiliation authorized; effective date; effect.
- 79-4,110. Class I district; merge, dissolve, or reorganize; limitations.
- 79-4,111. Unified system; Class I districts; treatment.

## (m) REORGANIZATION OF CLASS I AND VI SCHOOL DISTRICTS

- 79-4,112. Repealed. Referendum 2006, No. 422.
- 79-4,113. Repealed. Referendum 2006, No. 422.
- 79-4,114. Repealed. Referendum 2006, No. 422.
- 79-4,115. Repealed. Referendum 2006, No. 422.
- 79-4,116. Repealed. Referendum 2006, No. 422.

## (n) LEARNING COMMUNITY REORGANIZATION ACT

- 79-4,117. Act, how cited.
- 79-4,118. Terms, defined.
- 79-4,119. Reorganization; plan required.
- 79-4,120. Methods authorized.
- 79-4,121. Plan review; state committee; considerations.
- 79-4,122. Public hearings; record; notice.
- 79-4,123. Plan of reorganization; contents.
- 79-4,124. State committee; notification.
- 79-4,125. Disapproved plan; return to council.
- 79-4,126. Approved plan; procedure.
- 79-4,127. Indebtedness.
- 79-4,128. County clerk; duties; filings required.
- 79-4,129. State committee; duties; school board; appointments; terms; duties.
- 79-4,130. Repealed. Laws 2007, LB 641, § 54.

## (a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS FOR REORGANIZATION OF SCHOOL DISTRICTS

**79-401 Reorganization of school districts; findings; intent; goals.**

The Legislature finds and declares that orderly and appropriate reorganization of school districts may contribute to the objectives of tax equity, educational effectiveness, and cost efficiency. The Legislature further finds that there is a need for greater flexibility in school reorganization options and procedures. It is the intent of the Legislature to encourage an orderly and appropriate reorganization of school districts. The Legislature establishes as its goals for the reorganization of school districts that:

(1) All real property and all elementary and secondary students should be within school systems which offer education in grades kindergarten through twelve. For purposes of meeting this goal, Class I and Class VI school district combinations shall be considered as including all real property and all elementary and secondary students within a school district which offers education in kindergarten through grade twelve;

(2) School districts offering education in kindergarten through grade twelve should be encouraged, when possible, to consider cooperative programs in order to enhance educational opportunities to students; and

(3) The State Department of Education in conjunction with the Bureau of Educational Research and Field Studies in the Department of Education Administration at the University of Nebraska-Lincoln should be encouraged to

offer greater technical assistance to school districts which are considering reorganization options.

**Source:** Laws 1988, LB 940, § 1; R.S.1943, (1994), § 79-426.27; Laws 1996, LB 900, § 150; Laws 1999, LB 272, § 29; Laws 2005, LB 126, § 9; Referendum 2006, No. 422.

**79-402 Reorganization of school districts; requirements.**

(1) By July 1, 1993, all taxable property and all elementary and high school students shall be in school systems which offer education in grades kindergarten through twelve. For purposes of meeting such requirement, a Class I district or portion thereof which is part of a Class VI district and a Class I district or portion thereof affiliated with one or more Class II, III, IV, or V districts shall be considered to include all taxable property and all elementary and high school students within a school system which offers education in grades kindergarten through twelve.

(2) Effective July 1, 1993, with the full implementation of section 79-1077, the Legislature will have attained its school reorganization goals for Class I districts as described in section 79-401.

**Source:** Laws 1990, LB 259, § 1; Laws 1991, LB 511, § 24; Laws 1992, LB 245, § 29; Laws 1993, LB 348, § 14; R.S.1943, (1994), § 79-426.28; Laws 1996, LB 900, § 151; Laws 2005, LB 126, § 10; Referendum 2006, No. 422.

**79-403 Creation of new district; requirements.**

(1) Except as provided in subsections (2) and (3) of this section, no new school district shall be created unless such district provides instruction in kindergarten through grade twelve.

(2) A new Class VI school district may be created if:

(a) Such Class VI school district will include at least two or more previously existing Class II or Class III school districts, except that if a reorganization petition for formation of a Class VI school district is initiated by a petition signed by fifty-five percent of the legal voters of a Class II or III school district, then such Class VI school district may include only one Class II or III school district; and

(b) The enrollment of the new Class VI school district is (i) at least one hundred twenty-five pupils if the district offers instruction in grades nine through twelve, (ii) at least one hundred seventy-five pupils if the district offers instruction in grades seven through twelve, or (iii) at least two hundred students if the district offers instruction in grades six through twelve, except that if such district will have population density of less than three persons per square mile, then the enrollment shall be at least seventy-five students if the district offers instruction in grades nine through twelve, at least one hundred students if the district offers instruction in grades seven through twelve, or at least one hundred twenty-five students if the district offers instruction in grades six through twelve.

(3) One or more new Class I districts may be created as a part of a reorganization petition pursuant to subsection (2) of this section.

**Source:** Laws 1969, c. 703, § 1, p. 2702; Laws 1988, LB 940, § 2; Laws 1994, LB 1021, § 1; R.S.1943, (1994), § 79-102.01; Laws 1996, LB 900, § 152; Laws 1997, LB 806, § 5; Laws 2003, LB 394, § 2; Laws 2005, LB 126, § 11; Referendum 2006, No. 422.

**79-404 Merger of Class I districts within boundaries of Class VI district; not prohibited.**

Section 79-403 does not prohibit the merger of Class I districts or parts of Class I districts within the boundaries of a Class VI district.

**Source:** Laws 1969, c. 703, § 2, p. 2703; R.S.1943, (1994), § 79-102.02; Laws 1996, LB 900, § 153; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**(b) LEGAL STATUS, FORMATION, AND TERRITORY****79-405 District; body corporate; powers; name.**

Every duly organized school district shall be a body corporate and possess all the usual powers of a corporation for public purposes, may sue and be sued, and may purchase, hold, and sell such personal and real estate as the law allows. The county in which the principal office of the school district is located together with the school district number assigned pursuant to section 79-307 shall constitute the corporate name of the school district, such as . . . . . County School District . . . . .

**Source:** Laws 1881, c. 78, subdivision I, § 2, p. 331; R.S.1913, § 6701; C.S.1922, § 6239; C.S.1929, § 79-102; R.S.1943, § 79-102; Laws 1949, c. 256, § 40, p. 706; Laws 1961, c. 396, § 2, p. 1204; Laws 1988, LB 1142, § 4; R.S.1943, (1994), § 79-401; Laws 1996, LB 900, § 154; Laws 2005, LB 126, § 12; Referendum 2006, No. 422.

**Cross References**

**For recovery of public money,** see section 77-2363.

This section (formerly section 79-401) gives a school district the power to hold an easement in real estate. *Robertson v. School Dist. No. 17 of Douglas County*, 252 Neb. 103, 560 N.W.2d 469 (1997).

Territorial boundaries of school district are subject to change according to current educational needs and good educational principles. *Halstead v. Rozmiarek*, 167 Neb. 652, 94 N.W.2d 37 (1959).

Members of school board act in a representative capacity and not as individuals. *Greer v. Chelewski*, 162 Neb. 450, 76 N.W.2d 438 (1956).

A school district is a creature of statute, has no powers beyond those given by Legislature, and may contract only re-

specting objects and to extent laws permit. *American Surety Co. v. School District No. 64 of Douglas County*, 117 Neb. 6, 219 N.W. 583 (1928).

On appeal, district must give appeal bond. *School Dist. No. 6 of Cass County v. Traver*, 43 Neb. 524, 61 N.W. 720 (1895).

To state cause of action against school district, supposed indebtedness must be shown to have been lawfully incurred. *School Dist. No. 16 of Hamilton County v. School Dist. No. 9 of Hamilton County*, 12 Neb. 241, 11 N.W. 311 (1882).

Action on behalf of school district must be brought in name of district. *Donnelly v. Duras*, 11 Neb. 283, 9 N.W. 45 (1881).

**79-406 Class II school district creation; board.**

A Class II school district shall be created whenever a Class I school district determines to establish a high school by a majority vote of the legal voters at an annual or special meeting.

The members of the school board serving when it is decided to establish a high school shall determine how many members the school board will have and shall continue in office until the first regular meeting of the board in January following the next statewide general election. The Class II district school board shall be elected pursuant to section 32-542.

**Source:** Laws 1996, LB 900, § 155; Laws 1996, LB 967, § 4; Laws 1997, LB 345, § 8; Laws 2005, LB 126, § 57; Referendum 2006, No. 422; Laws 2014, LB946, § 35.  
Operative date January 1, 2015.

**Cross References**

**Discontinuation of high school**, change to Class I school district, see section 79-472.

**For qualifications of members of board of education**, see section 79-543.

**Limitation on creation of Class II school district from a Class I school district**, see section 79-472.

**Vacancies**, see section 79-545.

Officers of Class II district are president, secretary, and treasurer. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

Under former statute, an article 6 school could be organized if it contained more than 150 children between the ages of 5 and 21 years. *Griggs v. School District No. 76 of Wayne County*, 152 Neb. 282, 40 N.W.2d 859 (1950).

Under former act, section had no reference to proceedings to be had at first meeting of newly organized districts and did not

prohibit such districts from choosing between two forms of school government at organization meeting. *State ex rel. Davis v. Clarke*, 108 Neb. 638, 188 N.W. 472 (1922).

Under former law, term of old board expires on second Monday of July following. *State ex rel. Upton v. Weatherby*, 17 Neb. 553, 23 N.W. 512 (1885).

**79-407 Class III school district; boundaries; body corporate; powers.**

The territory within the corporate limits of each incorporated city or village in the State of Nebraska that is not in part within the boundaries of a learning community, together with such additional territory and additions to such city or village as may be added thereto, as declared by ordinances to be boundaries of such city or village, having a population of more than one thousand and less than one hundred fifty thousand inhabitants, including such adjacent territory as now is or hereafter may be attached for school purposes, shall constitute a Class III school district, except that nothing in this section shall be construed to change the boundaries of any school district that is a member of a learning community. The school district shall be a body corporate and possess all the usual powers of a corporation for public purposes and may sue and be sued, purchase, hold, and sell such personal and real property, and control such obligations as are authorized by law.

**Source:** Laws 1881, c. 78, subdivision XIV, § 1, p. 376; Laws 1883, c. 72, § 18, p. 296; Laws 1897, c. 69, § 1, p. 315; Laws 1909, c. 128, § 1, p. 472; R.S.1913, § 6948; Laws 1917, c. 128, § 1, p. 309; C.S.1922, § 6582; C.S.1929, § 79-2501; R.S.1943, § 79-2501; Laws 1949, c. 256, § 232, p. 767; Laws 1959, c. 382, § 4, p. 1325; Laws 1967, c. 541, § 1, p. 1782; Laws 1976, LB 383, § 1; Laws 1980, LB 743, § 3; Laws 1981, LB 16, § 2; Laws 1983, LB 465, § 1; Laws 1984, LB 908, § 1; Laws 1988, LB 1142, § 6; Laws 1988, LB 835, § 1; R.S.1943, (1994), § 79-801; Laws 1996, LB 900, § 156; Laws 1997, LB 345, § 9; Laws 1998, LB 629, § 2; Laws 2005, LB 126, § 13; Laws 2006, LB 1024, § 21; Referendum 2006, No. 422.

**Cross References**

**Annexation by change of city boundaries**, see section 79-473.

The selection of a site for a new school building in a Class III district is an administrative determination to be made by the

board of education of the district. *Christian v. Geis*, 193 Neb. 146, 225 N.W.2d 868 (1975).

**79-408 Class IV school district; boundaries; body corporate; powers; retirement plans; restrictions.**

The territory now or hereafter embraced within each incorporated city of the primary class in the State of Nebraska that is not in part within the boundaries of a learning community, such adjacent territory as now or hereafter may be included therewith for school purposes, and such territory not adjacent thereto as may have been added thereto by law shall constitute a Class IV school district, except that nothing in this section shall be construed to change the

boundaries of any school district that is a member of a learning community. A Class IV school district shall be a body corporate and possess all the usual powers of a corporation for public purposes, may sue and be sued, and may purchase, hold, and sell such personal and real estate and contract such obligations as are authorized by law. The powers of a Class IV district include, but are not limited to, the power to adopt, administer, and amend from time to time such retirement, annuity, insurance, and other benefit plans for its present and future employees after their retirement, or any reasonable classification thereof, as may be deemed proper by the board of education. The board of education shall not establish a retirement system for new employees supplemental to the School Employees Retirement System of the State of Nebraska.

The title to all real or personal property owned by such school district shall, upon the organization of the school district, vest immediately in the school district so created. The board of education shall have exclusive control of all property belonging to the school district.

In the discretion of the board of education, funds accumulated in connection with a retirement plan may be transferred to and administered by a trustee or trustees to be selected by the board of education, or if the retirement plan is in the form of annuity or insurance contracts, such funds, or any part thereof, may be paid to a duly licensed insurance carrier or carriers selected by the board of education. Funds accumulated in connection with any such retirement plan, and any other funds of the school district which are not immediately required for current needs or expenses, may be invested and reinvested by the board of education or by its authority in securities of a type permissible either for the investment of funds of a domestic legal reserve life insurance company or for the investment of trust funds, according to the laws of the State of Nebraska.

**Source:** Laws 1917, c. 225, § 1, p. 550; C.S.1922, § 6610; C.S.1929, § 79-2601; R.S.1943, § 79-2601; Laws 1947, c. 294, § 1(1), p. 907; Laws 1949, c. 256, § 244, p. 772; Laws 1963, c. 489, § 1, p. 1561; Laws 1971, LB 475, § 1; Laws 1988, LB 1142, § 7; R.S.1943, (1994), § 79-901; Laws 1996, LB 900, § 157; Laws 2005, LB 126, § 14; Laws 2006, LB 1024, § 22; Referendum 2006, No. 422; Laws 2011, LB509, § 15.

#### **79-409 Class V school district; body corporate; powers.**

Each incorporated city of the metropolitan class in the State of Nebraska shall contain at least one Class V school district. A Class V school district shall be a body corporate and possess all the usual powers of a corporation for public purposes and may sue and be sued, purchase, hold, and sell such personal and real property, and control such obligations as are authorized by law.

**Source:** Laws 1891, c. 45, § 1, p. 317; R.S.1913, § 7007; C.S.1922, § 6638; C.S.1929, § 79-2701; R.S.1943, § 79-2701; Laws 1947, c. 296, § 1, p. 910; Laws 1949, c. 256, § 248, p. 774; Laws 1988, LB 1142, § 8; R.S.1943, (1994), § 79-1001; Laws 1996, LB 900, § 158; Laws 2005, LB 126, § 15; Laws 2006, LB 1024, § 23; Referendum 2006, No. 422.

#### **79-410 Class VI school district; classification.**

All school districts organized as of August 27, 1949, as rural high school districts or as county high school districts and all school districts formed as high school districts only shall be Class VI school districts.

**Source:** Laws 1949, c. 256, § 294, p. 789; R.S.1943, (1994), § 79-1101; Laws 1996, LB 900, § 159; Laws 2005, LB 126, § 16; Referendum 2006, No. 422.

**79-411 Class VI school district; junior-senior high school district created; procedure; vote required.**

The legal voters of any Class VI school district may, by a fifty-five percent majority affirmative vote of those voting on the issue at a special election of the district, extend the grade offerings of that district to include grades seven and eight or grades six through eight. Such election shall be conducted by the county clerk or election commissioner in accordance with the Election Act. If the issue receives such fifty-five percent majority affirmative vote, the school district shall then be known as a Class VI junior-senior high school district and shall be supported in the same manner as was provided for the support of the district previous to the extension of its grade offerings. In such an election, the legal voters of all Class I school districts in which there is located an incorporated city or village shall vote separately and the remaining Class I school districts shall vote separately as a unit either for a plan for the individual district or with more districts as determined by the vote by the election. Fifty-five percent of the votes cast in each voting unit shall be in favor of the proposition to put such a plan into operation.

**Source:** Laws 1961, c. 405, § 1, p. 1222; Laws 1972, LB 661, § 87; Laws 1994, LB 76, § 606; R.S.1943, (1994), § 79-1109; Laws 1996, LB 900, § 160; Laws 1997, LB 345, § 10; Laws 1997, LB 347, § 7; Laws 2003, LB 394, § 3; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**Cross References**

Election Act, see section 32-101.

**79-412 Districts; bordering on river constituting state boundary line; boundary.**

The boundary line or part thereof of all school districts which border on any river that is the boundary line between the State of Nebraska and any other state shall be identical with the boundary line of the state.

**Source:** Laws 1923, c. 62, § 1, p. 189; C.S.1929, § 79-131; R.S.1943, § 79-143; Laws 1949, c. 256, § 60, p. 713; R.S.1943, (1994), § 79-421; Laws 1996, LB 900, § 161.

**(c) PETITION PROCESS FOR REORGANIZATION**

**79-413 School districts; creation from other school districts; change of boundaries; affiliation; conditions; petition method; procedure.**

(1) The State Committee for the Reorganization of School Districts created under section 79-435 may create a new school district from other districts, change the boundaries of any district that is not a member of a learning community, or affiliate a Class I district or portion thereof with one or more

existing Class II, III, IV, or V districts upon receipt of petitions signed by sixty percent of the legal voters of each district affected. If the petitions contain signatures of at least sixty-five percent of the legal voters of each district affected, the state committee shall approve the petitions. When area is added to a Class VI district or when a Class I district which is entirely or partially within a Class VI district is taken from the Class VI district, the Class VI district shall be deemed to be an affected district.

Any petition of the legal voters of a Class I district in which no city or village is situated which is commenced after January 1, 1996, and proposes the dissolution of the Class I district and the attachment of a portion of it to two or more districts shall require signatures of more than fifty percent of the legal voters of such Class I district. If the state committee determines that such petition contains valid signatures of more than fifty percent of the legal voters of such Class I district, the state committee shall grant the petition.

(2)(a) Petitions proposing to change the boundaries of existing school districts that are not members of a learning community through the transfer of a parcel of land, not to exceed six hundred forty acres, shall be approved by the state committee when the petitions involve the transfer of land between Class I, II, III, or IV school districts or when there would be an exchange of parcels of land between Class I, II, III, or IV school districts and the petitions have the approval of at least sixty-five percent of the school board of each affected district. If the transfer of the parcel of land is from a Class I school district to one or more Class II, III, IV, V, or VI school districts of which the parcel is not a part or with which the parcel is not affiliated, any Class II, III, IV, V, or VI school district of which the parcel is not a part or with which the parcel is affiliated shall be deemed an affected district.

(b) The state committee shall not approve a change of boundaries pursuant to this section relating to affiliation of school districts if twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed unless (i) one or more resident students of the tract of land under common ownership has attended the high school program of the high school district within the immediately preceding ten-year period or (ii) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(3)(a) Petitions proposing to create a new school district, to change the boundary lines of existing school districts that are not members of a learning community, to create an affiliated school system, or to affiliate a Class I district in part and to join such district in part with a Class VI district, any of which involves the transfer of more than six hundred forty acres, shall, when signed by at least sixty percent of the legal voters in each district affected, be submitted to the state committee. In the case of a petition for affiliation or a petition to affiliate in part and in part to join a Class VI district, the state committee shall review the proposed affiliation subject to sections 79-425 and 79-426. The state committee shall, within forty days after receipt of the petition, hold one or more public hearings and review and approve or disapprove such proposal.

(b) If there is a bond election to be held in conjunction with the petition, the state committee shall hold the petition until the bond election has been held, during which time names may be added to or withdrawn from the petitions. The results of the bond election shall be certified to the state committee.

(c) If the bond election held in conjunction with the petition is unsuccessful, no further action on the petition is required. If the bond election is successful, within fifteen days after receipt of the certification of the bond election results, the state committee shall approve the petition and notify the county clerk to effect the changes in district boundary lines as set forth in the petitions.

(4) Any person adversely affected by the changes made by the state committee may appeal to the district court of any county in which the real estate or any part thereof involved in the dispute is located. If the real estate is located in more than one county, the court in which an appeal is first perfected shall obtain jurisdiction to the exclusion of any subsequent appeal.

(5) A signing petitioner may withdraw his or her name from a petition and a legal voter may add his or her name to a petition at any time prior to the end of the period when the petition is held by the state committee. Additions and withdrawals of signatures shall be by notarized affidavit filed with the state committee.

**Source:** Laws 1881, c. 78, subdivision I, § 4, p. 332; Laws 1883, c. 72, § 1, p. 288; Laws 1885, c. 79, § 1, p. 319; Laws 1889, c. 78, § 1, p. 539; Laws 1895, c. 58, § 1, p. 221; Laws 1901, c. 59, § 1, p. 429; Laws 1909, c. 117, § 1, p. 451; R.S.1913, § 6703; C.S.1922, § 6241; Laws 1923, c. 63, § 1, p. 190; Laws 1925, c. 177, § 1, p. 461; C.S.1929, § 79-104; Laws 1931, c. 145, § 1, p. 396; C.S.Supp.,1941, § 79-104; Laws 1943, c. 197, § 1(2), p. 659; R.S.1943, § 79-105; Laws 1949, c. 256, § 41, p. 706; Laws 1951, c. 276, § 2, p. 928; Laws 1953, c. 295, § 1, p. 999; Laws 1955, c. 315, § 3, p. 973; Laws 1957, c. 342, § 1, p. 1181; Laws 1959, c. 385, § 1, p. 1334; Laws 1963, c. 471, § 1, p. 1511; Laws 1963, c. 473, § 1, p. 1519; Laws 1963, c. 474, § 1, p. 1522; Laws 1963, c. 475, § 1, p. 1525; Laws 1963, c. 472, § 1, p. 1514; Laws 1967, c. 529, § 1, p. 1757; Laws 1971, LB 468, § 1; Laws 1984, LB 1098, § 1; Laws 1990, LB 259, § 5; Laws 1991, LB 511, § 11; Laws 1992, LB 245, § 16; Laws 1992, LB 719, § 1; Laws 1996, LB 604, § 4; R.S.1943, (1994), § 79-402; Laws 1996, LB 900, § 162; Laws 1996, LB 1050, § 2; Laws 1997, LB 806, § 6; Laws 1999, LB 272, § 30; Laws 2001, LB 302, § 1; Laws 2005, LB 126, § 17; Laws 2006, LB 1024, § 24; Referendum 2006, No. 422; Laws 2011, LB8, § 1; Laws 2011, LB235, § 2.

1. Change of boundaries
2. Consolidation
3. Procedure
4. Miscellaneous

#### 1. Change of boundaries

A state committee's approval of a petition for reorganization, including a school district's reallocation of bonding authority, is a "change" within the committee's jurisdiction under subsection (4) of this section, subject to appeal, and it may not be collaterally attacked. *Cumming v. Red Willow Sch. Dist.* No. 179, 273 Neb. 483, 730 N.W.2d 794 (2007).

A state committee's approval of a petition for reorganization, including a school district's reallocation of debt, is a "change" within the committee's jurisdiction under subsection (4) of this section and is subject to appeal. *Nicholson v. Red Willow Cty. Sch. Dist.* No. 0170, 270 Neb. 140, 699 N.W.2d 25 (2005).

Authorization to change boundaries of school districts under sections 79-402 and 79-402.03 is not limited to lands in one compact contiguous area, nor is the transfer of land from one

school district to another limited to land contiguous to the common boundary between the two districts. In re Proceedings re Hartwell and Minden School Dists. R-4 & R-3, 211 Neb. 453, 319 N.W.2d 68 (1982).

County superintendents of schools have the authority to create new districts or change the boundaries of existing districts under specific conditions. *Moser v. Turner*, 180 Neb. 635, 144 N.W.2d 192 (1966).

Districts affected by order are those districts whose boundaries will be changed. *Lindgren v. School Dist. of Bridgeport*, 170 Neb. 279, 102 N.W.2d 599 (1960).

Creation of new district requires petition by qualified voters. *Clausen v. School Dist. No. 33 of Lincoln County*, 164 Neb. 78, 81 N.W.2d 822 (1957).

Where proper petition is filed, it is the mandatory duty of county superintendent to order boundary change. *Olsen v. Gros-shans*, 160 Neb. 543, 71 N.W.2d 90 (1955).

Order changing boundaries cannot be collaterally attacked. *Cacek v. Munson*, 160 Neb. 187, 69 N.W.2d 692 (1955).

Provisions of this section are mandatory and jurisdictional. *State ex rel. Larson v. Morrison*, 155 Neb. 309, 51 N.W.2d 626 (1952).

County superintendent cannot change or modify boundaries of a school district which are fixed by a special act of the Legislature. *Plattsmouth Bridge Co. v. Turner*, 128 Neb. 738, 260 N.W. 562 (1935).

Under former act, petition of one-third of voters necessary to change boundaries was necessary. *Cowles v. School Dist. No. 6 of Jefferson County*, 23 Neb. 655, 37 N.W. 493 (1888).

## 2. Consolidation

Apportionment of assets of school districts upon partial or complete merger, division, or annexation decided. *School Dist. No. 74 of Hall County v. School Dist. of Grand Island*, 186 Neb. 728, 186 N.W.2d 485 (1971).

Consolidation of districts may be had without submission of plan to state committee. *School District No. 42 of Hitchcock County v. Marshall*, 160 Neb. 832, 71 N.W.2d 549 (1955).

Consolidation requires joint action of districts involved. *Peter-son v. Hancock*, 155 Neb. 801, 54 N.W.2d 85 (1952).

## 3. Procedure

Under this section, action by a county or state reorganization committee, approving or disapproving a school district reorgani-zation plan, is advisory only and a recommendation which does not bind a county superintendent concerning a change in a school district's boundaries. When the county superintendent has determined that the reorganization petition has sufficient valid signatures, the superintendent's duty to carry out the petition reorganization is mandatory. *Leibbrandt v. Lomax*, 228 Neb. 552, 423 N.W.2d 453 (1988).

Under petition form of reorganization, the provisions of the statutes are mandatory and jurisdictional, and once a sufficient number of legal voters of each district have signed a petition the superintendent must act in accordance with the statutes. *Erik-son v. Ray*, 212 Neb. 8, 321 N.W.2d 59 (1982).

Legal school voters are entitled to judicial review of school district boundary changes and may intervene in district court proceeding brought by one of districts involved. *School Dist. of Gering v. Stannard*, 193 Neb. 624, 228 N.W.2d 600 (1975).

Validity and sufficiency of petition is to be determined as of date it is filed with county superintendent ten days after public hearing by county committee. *Virka v. Knox*, 187 Neb. 664, 193 N.W.2d 573 (1972).

Any person adversely affected by a ruling by the county superintendent hereunder may proceed either by appeal or by error. *Cherry v. Lofgren*, 187 Neb. 133, 187 N.W.2d 652 (1971).

Provision in this section for direct appeal limited to an order which required superintendent to act in a judicial manner. *Kosmicki v. Kowalski*, 184 Neb. 639, 171 N.W.2d 172 (1969).

In an error proceeding under this section, jurisdiction denied where appellant failed to file a properly authenticated tran-script. *Lemburg v. Nielsen*, 182 Neb. 747, 157 N.W.2d 381 (1968).

Any person affected by changes of boundaries of district may appeal. *Languis v. De Boer*, 181 Neb. 32, 146 N.W.2d 750 (1966).

Any person adversely affected by changes made by county superintendent under this section may appeal to district court. *School Dist. of Wilber v. Pracheil*, 180 Neb. 121, 141 N.W.2d 768 (1966).

A legal voter may add name to petition at any time before petition is filed with county superintendent. *Harnapp v. Bige-low*, 178 Neb. 440, 133 N.W.2d 611 (1965).

Signatures to a petition for change of boundaries of a school district may be added after the time petition was originally circulated and before it was filed. *Retzlaff v. Synovec*, 178 Neb. 147, 132 N.W.2d 314 (1965).

Change of boundaries of school district may be made upon petitions signed by fifty-five percent of the legal voters of the district. *Bierman v. Campbell*, 175 Neb. 877, 124 N.W.2d 918 (1963).

Denial of petition for school district reorganization was final appealable order. *Frankforter v. Turner*, 175 Neb. 252, 121 N.W.2d 377 (1963).

Proceedings for reorganization under petition method are to be distinguished from proceedings under election method. *Longe v. County of Wayne*, 175 Neb. 245, 121 N.W.2d 196 (1963).

Proceedings under this section are to be distinguished from proceedings for reorganization of school districts. *Arends v. Whitten*, 172 Neb. 297, 109 N.W.2d 363 (1961).

Notice and hearing on change of boundaries of any class of school district is provided. *Perkins County High School Dist. v. McQuiston*, 167 Neb. 330, 93 N.W.2d 32 (1958).

Petitions of several districts affected must concur in request-ing substantially identical action. *Dovel v. School Dist. No. 23 of Otoe County*, 166 Neb. 548, 90 N.W.2d 58 (1958).

Where proper petitions are filed, it is mandatory duty to hold hearing, and if petitions are sufficient, to change boundaries as requested. *School Dist. No. 49 of Merrick County v. Kriedler*, 165 Neb. 761, 87 N.W.2d 429 (1958).

Where signers of petition are numerous, one or more may sue or defend for all provided proper allegations of class action are made. *Keedy v. Reid*, 165 Neb. 519, 86 N.W.2d 370 (1957).

Under prior law, signer of petition could withdraw at any time before county superintendent acted thereon. *State ex rel. Glenn v. Bennett*, 156 Neb. 258, 55 N.W.2d 677 (1952).

## 4. Miscellaneous

An accepted affiliation petition is not a contract; rather, it creates a new school system. The predecessor to this section, section 79-426.28, made clear the Legislature's intent to have all taxable property in the state within or at least affiliated with a school system that offers education in grades K through 12 by July 1, 1993. *State ex rel. Fick v. Miller*, 255 Neb. 387, 584 N.W.2d 809 (1998).

Former section 79-801.02 is limited to provisions of former section 79-801, and is not applicable to school district boundary changes under other statutes. *Corcoran v. Boone County Board of Equalization*, 196 Neb. 363, 243 N.W.2d 60 (1976).

Plan for voluntary dissolution of school district ceases to be available when provisions for mandatory dissolution are appli-cable and have been invoked. *Nelson v. Robertson*, 187 Neb. 192, 188 N.W.2d 720 (1971).

Unless rural organization committee acts promptly on peti-tions presented under this section or interested parties within reasonable time institute proceedings to force action, committee will lose jurisdiction to act. *Chappell v. Carr*, 185 Neb. 158, 174 N.W.2d 208 (1970).

The 1965 amendment of section independent of other statutes relating to same subject. *Hall v. Simpson*, 184 Neb. 762, 171 N.W.2d 805 (1969).

Validity and sufficiency of petitions for merger of school districts are determined by the county superintendent after notice and hearing. *Reid v. Slepicka*, 182 Neb. 485, 155 N.W.2d 799 (1968).

This section, with others, provides the basis for dissolution of school district and attachment of its area to other districts. *Board of Education v. Winne*, 177 Neb. 431, 129 N.W.2d 255 (1964).

Under former section, Class VI school district was validly created. *State ex rel. Venango Rural High School Dist. v. Ziegler*, 173 Neb. 758, 115 N.W.2d 142 (1962).

Part of 1957 amendment to this section was unconstitutional as not having been expressed in the title. *State ex rel. Bottolfson v. School Board of School Dist. No. R1 of Cedar and Dixon Counties*, 170 Neb. 417, 103 N.W.2d 146 (1960).

County high school district was not a district affected by detachment of an elementary school district within its territorial

area. *Halstead v. Rozmiarek*, 167 Neb. 652, 94 N.W.2d 37 (1959).

Advice as to effect of this section did not work estoppel on reorganization of district. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

### **79-414 Districts; change in territory; list of voters; accompany petition.**

A list or lists of all the legal voters in each district or territory affected, made under the oath of a resident of each district or territory, shall be given to the State Committee for the Reorganization of School Districts when the petition is filed under section 79-413.

**Source:** Laws 1883, c. 72, § 1, p. 288; Laws 1885, c. 79, § 1, p. 319; Laws 1889, c. 78, § 1, p. 539; Laws 1895, c. 58, § 1, p. 221; Laws 1901, c. 59, § 1, p. 429; Laws 1909, c. 117, § 1, p. 451; R.S.1913, § 6703; C.S.1922, § 6241; Laws 1923, c. 63, § 1, p. 190; Laws 1925, c. 177, § 1, p. 461; C.S.1929, § 79-104; Laws 1931, c. 145, § 1, p. 396; C.S.Supp.,1941, § 79-104; Laws 1943, c. 197, § 1(5), p. 662; R.S.1943, § 79-110; Laws 1949, c. 256, § 43, p. 707; R.R.S.1943, § 79-404; Laws 1971, LB 468, § 7; R.S.1943, (1994), § 79-402.08; Laws 1996, LB 900, § 163; Laws 1999, LB 272, § 31.

### **79-415 Changes in boundaries; creation of new district; affiliation; how initiated.**

(1) In addition to the petitions of legal voters pursuant to section 79-413, changes in boundaries and the creation of a new school district from other districts may be initiated and accepted by the school board or board of education of any district that is not a member of a learning community.

(2) In addition to the petitions of legal voters pursuant to section 79-413, the affiliation of a Class I district or portion thereof with one or more Class II, III, IV, or V districts may be initiated and accepted by:

(a) The board of education of any Class II, III, IV, or V district; and

(b) The school board of any Class I district in which is located a city or incorporated village.

**Source:** Laws 1971, LB 468, § 2; Laws 1990, LB 259, § 6; Laws 1991, LB 511, § 12; Laws 1992, LB 245, § 17; R.S.1943, (1994), § 79-402.03; Laws 1996, LB 900, § 164; Laws 1997, LB 806, § 7; Laws 2005, LB 126, § 18; Laws 2006, LB 1024, § 25; Referendum 2006, No. 422.

An accepted affiliation petition is not a contract; rather, it creates a new school system. *State ex rel. Fick v. Miller*, 255 Neb. 387, 584 N.W.2d 809 (1998).

### **79-416 School districts; merger or affiliation; petition.**

When the legal voters of a Class I or Class II school district that is not a member of a learning community and in which no city or village is located petition to merge in whole or in part with a Class I or Class II district, the merger may be accepted by petition of the school board of the accepting district. When the legal voters of a Class I district petition to affiliate in whole or in part with one or more Class II, III, IV, or V districts, such affiliation may

be accepted or rejected by petition of the school board or board of education of any such district, but in either case the petition to affiliate shall be accepted or rejected within sixty days after the date of receipt of the petition by the school board or board of education of such district.

**Source:** Laws 1971, LB 468, § 3; Laws 1990, LB 259, § 7; Laws 1991, LB 511, § 13; Laws 1992, LB 245, § 18; R.S.1943, (1994), § 79-402.04; Laws 1996, LB 900, § 165; Laws 2005, LB 126, § 19; Laws 2006, LB 1024, § 26; Referendum 2006, No. 422.

**79-417 Class I school district; merger with certain Class I school districts; petition.**

When the legal voters of a Class I school district petition to merge with a Class I district with a six-member school board, such merger may be accepted by petition of the school board of the accepting district.

**Source:** Laws 1971, LB 468, § 4; R.S.1943, (1994), § 79-402.05; Laws 1996, LB 900, § 166; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**79-418 Changes in boundaries; creation of new school district; petition; requirements.**

Petitions presented pursuant to sections 79-415 to 79-417 shall be subject to the same requirements for content, hearings, notice, review, and appeal as petitions submitted pursuant to section 79-413, except that a petition presented pursuant to section 79-415 shall not become effective unless it is approved by a vote of a majority of the members of the State Committee for the Reorganization of School Districts. Any person adversely affected by the disapproval shall have the right of appeal under section 79-413.

**Source:** Laws 1971, LB 468, § 5; Laws 1984, LB 942, § 1; R.S.1943, (1994), § 79-402.06; Laws 1996, LB 900, § 167; Laws 1997, LB 806, § 8; Laws 1999, LB 272, § 32; Laws 2005, LB 126, § 20; Referendum 2006, No. 422.

**79-419 Districts; creation from other districts; petition; contents.**

(1) When a new district is to be created from other districts as provided in section 79-413, the petition shall contain:

(a) A description of the proposed boundaries of the reorganized districts;

(b) A summary of the terms on which reorganization is to be made between the reorganized districts, which terms may include a provision for initial school board districts or wards within the proposed district for the appointment of the first school board and also for the first election as provided in section 79-451, which proposed initial school board districts or wards shall be determined by the State Committee for the Reorganization of School Districts taking into consideration population and valuation, and a determination of the terms of the board members first appointed to membership of the board of the newly reorganized district;

(c) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization;

(d) A separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization;

(e) An affidavit from the county clerk or election commissioner regarding the validity of the signatures on the petition; and

(f) Such other matters as the petitioners determine proper to be included. Any petition for the creation of a new Class VI district shall designate whether such district shall include high school grades only, grades seven through twelve, or grades six through twelve.

(2) A petition under subsection (1) of this section may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under this section shall be maintained from the date of reorganization unless the legal voters served by the school vote by a majority vote for discontinuance of the school.

**Source:** Laws 1963, c. 475, § 2, p. 1528; R.R.S.1943, (1966), § 79-402.01; Laws 1971, LB 468, § 6; Laws 1985, LB 662, § 26; R.S.1943, (1994), § 79-402.07; Laws 1996, LB 900, § 168; Laws 1997, LB 806, § 9; Laws 1999, LB 272, § 33; Laws 2003, LB 394, § 4; Laws 2005, LB 126, § 21; Referendum 2006, No. 422.

Under the precursor to subsection (2) of this section, merging school boards were not authorized to include in their merger petition a requirement that the surviving school board obtain a majority vote from voters in a former school district or a

unanimous vote from school board members before moving grades four through six from an elementary school in a former district. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

**79-420 School districts; creation from other school districts; appointment of first school board; term; election of successors.**

Within thirty days after the creation of a new school district pursuant to sections 79-413 to 79-419, the State Committee for the Reorganization of School Districts shall appoint from among the legal voters of the new school district created the number of members necessary to constitute a school board of the class in which the new school district has been classified. Members of the first board shall be appointed so that their terms will expire in accord with provisions of law governing school districts of the class involved. The board so appointed shall organize at once in the manner prescribed by law. A reorganized school district shall be formed, organized, and have a governing board not later than April 1 following the last legal action, as prescribed in section 79-413, necessary to effect the changes in boundaries as set forth in the petition, although the physical reorganization of such reorganized school district may not take effect until the commencement of the following school year. At the next annual school meeting or election following the establishment of the new school district and at subsequent annual meetings or elections, successors shall be elected in the manner provided by law for election of board members of the class to which the school district belongs.

**Source:** Laws 1963, c. 475, § 3, p. 1528; R.R.S.1943, (1966), § 79-402.02; Laws 1971, LB 468, § 8; Laws 1988, LB 520, § 1; R.S.1943, (1994), § 79-402.09; Laws 1996, LB 900, § 169; Laws 1997, LB 345, § 11; Laws 1999, LB 272, § 34.

**79-421 Territory not included in organized district; county clerk; notice; hearing.**

(1) When it comes to the attention of the county clerk that any territory located wholly within his or her county is not included in any organized district, he or she shall notify the State Committee for the Reorganization of School Districts. Within fifteen days after such notice, the state committee shall

set a date for a hearing on the question of the district or districts to which such territory should be attached and shall give fifteen days' notice by certified or registered mail of the time and place of hearing to each legal voter residing in such territory and whose mailing address is known and also to the school board of each school district in the county adjacent to such territory. Notice of the hearing also shall be given by publication once each week for two weeks in a newspaper of general circulation in the county. Following such hearing, the state committee shall notify the county clerk of the county or counties containing the district or districts to which such territory should be attached and the county clerk shall attach such territory.

(2) If the state committee cannot or does not agree on the district or districts to which the territory shall be attached, within sixty days after being notified by the county clerk, the matter shall be referred to the State Board of Education which shall attach the territory after notice and hearing. Notice shall be given in the same manner as by the state committee.

(3) In determining the district or districts to which such territory shall be attached, consideration shall be given to the school facilities, transportation facilities, and distance children must travel to school.

**Source:** Laws 1971, LB 468, § 9; R.S.1943, (1994), § 79-402.10; Laws 1996, LB 900, § 170; Laws 1999, LB 272, § 35.

**79-422 Change in boundary lines; affiliation; bonded indebtedness; treatment.**

(1) Bonded indebtedness approved by legal voters prior to any change in school district boundary lines pursuant to sections 79-413 to 79-421 shall remain the obligation of the school district voting such bonds unless otherwise specified in the petitions. When a district is dissolved by petitions and the area is attached to two or more districts, the petitions shall specify the disposition of assets and unbonded obligations of the original district.

(2) Bonded indebtedness approved by legal voters for high school facilities prior to the establishment of an affiliation shall remain the obligation of the high school district unless otherwise specified in the petitions.

**Source:** Laws 1971, LB 468, § 10; Laws 1990, LB 259, § 11; Laws 1993, LB 348, § 13; R.S.1943, (1994), § 79-402.11; Laws 1996, LB 900, § 171; Laws 2005, LB 126, § 22; Referendum 2006, No. 422.

**79-423 School district boundaries; legal voters; vote at district meetings or district elections.**

In Class I, II, III, IV, and VI school districts, school district boundaries may comprise all or any part of a precinct or ward in any county or counties, and every legal voter of the school district shall be entitled to vote at any school district meeting or school district election.

**Source:** Laws 1974, LB 897, § 12; R.S.1943, (1994), § 79-402.12; Laws 1996, LB 900, § 172; Laws 1997, LB 345, § 12; Laws 2005, LB 126, § 23; Referendum 2006, No. 422.

**79-424 Petition or plan for affiliation; procedures applicable.**

A Class I school district or portion thereof which comes within the provisions of section 79-431 may file a petition for affiliation pursuant to section 79-413,

79-415, or 79-416 or a plan for affiliation pursuant to the Reorganization of School Districts Act with the State Committee for the Reorganization of School Districts to affiliate with one or more Class II, III, IV, or V districts, or to affiliate in part with one or more Class II, III, IV, or V districts and in part to become part of one or more Class VI districts. Affiliation shall be accomplished pursuant to any of the procedures prescribed in the act and sections 79-413 to 79-419.

**Source:** Laws 1990, LB 259, § 4; Laws 1991, LB 511, § 14; Laws 1992, LB 245, § 19; R.S.1943, (1994), § 79-402.13; Laws 1996, LB 900, § 173; Laws 1997, LB 347, § 8; Laws 1999, LB 272, § 36; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**Cross References**

Reorganization of School Districts Act, see section 79-432.

**79-425 Petition or plan for affiliation; resubmission; procedure.**

If a petition for affiliation pursuant to section 79-413, 79-415, or 79-416 or plan for affiliation proposed under the Reorganization of School Districts Act is rejected by the school board or the legal voters of a Class II, III, IV, or V school district, such petition or plan may be resubmitted after sixty days from the date of the rejection, and the board or legal voters receiving such petition or plan for affiliation shall either accept or reject such petition or plan within sixty days after the date of receipt of such petition or plan. If the petition or plan for affiliation is again rejected by the board or legal voters of such district, the State Committee for the Reorganization of School Districts shall hold a hearing pursuant to the procedures provided in section 79-413 and, within ten days after such hearing, make a determination whether to approve or reject the affiliation.

**Source:** Laws 1990, LB 259, § 8; Laws 1991, LB 511, § 15; Laws 1992, LB 245, § 20; R.S.1943, (1994), § 79-402.14; Laws 1996, LB 900, § 174; Laws 1999, LB 272, § 37; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**Cross References**

Reorganization of School Districts Act, see section 79-432.

**79-426 Petition or plan for affiliation; state committee; powers and duties.**

(1) The State Committee for the Reorganization of School Districts, when considering a petition or a plan to affiliate a Class I school district or portion thereof with one or more Class II, III, IV, or V school districts, shall consider the traditional high school attendance patterns of resident students of such Class I district. The state committee may reject a petition or plan to affiliate only for the reasons stated in subsection (2) of this section.

(2) The state committee may reject a petition or plan for affiliation when:

(a) No Class I district resident student has attended the high school program of the Class II, III, IV, or V district with which an affiliation is proposed during the immediately preceding ten-year period;

(b) The affiliation would require the construction of new high school facilities; or

(c) The affiliation would result in assignment of less than forty percent of the valuation of the Class I district to a high school district which over the

immediately preceding five-year period has educated eighty percent or more of the students from such Class I district.

(3) The state committee shall reject a petition or plan for affiliation when twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed. The state committee shall not reject a petition or plan under this subsection if (a) one or more resident students of the tract of land under common ownership has attended the high school program of the high school district within the immediately preceding ten-year period or (b) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(4) A rejected petition shall stand rejected notwithstanding that it has been signed by over sixty-five percent of the legal voters of the petitioning Class I district.

**Source:** Laws 1990, LB 259, § 9; Laws 1991, LB 511, § 16; Laws 1992, LB 245, § 21; Laws 1996, LB 604, § 5; R.S.1943, (1994), § 79-402.15; Laws 1996, LB 900, § 175; Laws 1999, LB 272, § 38; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

#### **79-427 Petition or plan for affiliation; contents.**

A petition for affiliation pursuant to sections 79-413, 79-415, and 79-416 and a plan for affiliation pursuant to the Reorganization of School Districts Act shall contain (1) a description and a map of the proposed boundaries of the affiliated school system and (2) terms of the affiliation, including (a) coordination of elementary curriculum subject to section 79-716 and (b) provision for the establishment and maintenance of an advisory committee as prescribed by section 79-4,103. An affiliation plan or a petition may include provisions allowing parents to continue educating their children in the district in which they currently have children enrolled with reimbursement to be paid to the receiving district from the affiliated high school district based on the per pupil cost for high school students of such districts as reported on the preceding year's annual financial report.

**Source:** Laws 1990, LB 259, § 10; Laws 1991, LB 511, § 17; Laws 1992, LB 245, § 22; R.S.1943, (1994), § 79-402.16; Laws 1996, LB 900, § 176; Laws 1999, LB 272, § 39; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

#### **Cross References**

Reorganization of School Districts Act, see section 79-432.

The predecessor to this section, section 79-402.16, requires that the affiliation petition provide for the geographical boundaries of the proposed affiliated school system. State ex rel. Fick v. Miller, 255 Neb. 387, 584 N.W.2d 809 (1998).

**79-428 Repealed. Laws 1997, LB 347, § 59; Laws 1997, LB 806, § 69.**

**79-429 Repealed. Laws 1997, LB 347, § 59; Laws 1997, LB 806, § 69.**

**79-430 Repealed. Laws 1997, LB 347, § 59; Laws 1997, LB 806, § 69.**

**79-431 Affiliation; districts subject to dissolution; merger authorized; state committee; duties; districts which become Class I districts and dissolved districts; actions required.**

(1) Any Class I school district which is part of a Class VI district or districts or any Class I district or portion thereof which is affiliated or affiliated in part and also part of a Class VI district or districts and which (a) becomes subject to dissolution pursuant to section 79-470, 79-498, or 79-598 or (b) otherwise dissolves, unless otherwise prescribed in the affiliation petition, shall be merged with another affiliated Class I district, be merged with a Class II, III, IV, or V district, or be merged with a Class I district which is part of a Class VI district or districts. Any such district or portion thereof which fails to comply with this subsection shall be dissolved and attached to an existing Class II, III, IV, or V district by the State Committee for the Reorganization of School Districts under section 79-498. Any such district or portion thereof which was affiliated shall retain its original affiliation, and any portion of such district which was part of a Class VI district shall remain part of such Class VI district. Any school district which fails to comply with the provisions of subsection (1) of section 79-402 shall be dissolved by the state committee and attached to an existing Class II, III, IV, or V district.

(2) A Class II, III, IV, or V district which becomes a Class I district pursuant to section 79-472 or any other state law shall merge with a Class II, III, IV, or V district, affiliate with one or more Class II, III, IV, or V districts, become part of one or more Class VI districts, or affiliate in part with one or more Class II, III, IV, or V districts and in part become part of one or more Class VI districts.

(3) If an affiliated Class II, III, IV, or V district dissolves, unless otherwise stated in the affiliation petition, any portions of a Class I district that are affiliated with such district may affiliate with another Class II, III, IV, or V district, merge with any Class I, II, III, IV, or V district, or become part of a Class VI district.

(4) If a Class VI district dissolves, any Class I district or portions thereof which are part of such district may affiliate with a Class II, III, IV, or V district, merge with any Class I, II, III, IV, or V district, or become part of another Class VI district.

**Source:** Laws 1990, LB 259, § 28; Laws 1991, LB 511, § 21; Laws 1992, LB 245, § 26; Laws 1992, LB 1001, § 12; R.S.1943, (1994), § 79-402.20; Laws 1996, LB 900, § 180; Laws 1997, LB 347, § 9; Laws 1997, LB 806, § 10; Laws 1999, LB 272, § 40; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

This section provides only one express way for school districts to become unaffiliated, which is the dissolution of one of the districts. State ex rel. Fick v. Miller, 255 Neb. 387, 584 N.W.2d 809 (1998).

#### (d) REORGANIZATION OF SCHOOL DISTRICTS ACT

##### **79-432 Act, how cited.**

Sections 79-432 to 79-451 shall be known and may be cited as the Reorganization of School Districts Act.

**Source:** Laws 1949, c. 249, § 19, p. 679; R.R.S.1943, (1958), § 79-426.19; Laws 1963, c. 479, § 15, p. 1545; R.S.1943, (1994), § 79-426.22; Laws 1996, LB 900, § 181; Laws 1997, LB 806, § 11.

##### **79-433 Terms, defined.**

For purposes of the Reorganization of School Districts Act, unless the context otherwise requires:

(1) Reorganization of school districts means the formation of new school districts, the alteration of boundaries of established school districts that are not members of a learning community, the affiliation of school districts, and the dissolution or disorganization of established school districts through or by means of any one or combination of the methods set out in section 79-434; and

(2) State committee means the State Committee for the Reorganization of School Districts created by section 79-435.

**Source:** Laws 1949, c. 249, § 1, p. 673; Laws 1963, c. 479, § 1, p. 1536; Laws 1990, LB 259, § 12; R.S.1943, (1994), § 79-426.01; Laws 1996, LB 900, § 182; Laws 1999, LB 272, § 41; Laws 2005, LB 126, § 24; Laws 2006, LB 1024, § 27; Referendum 2006, No. 422.

Consolidation by election method is to be distinguished from proceedings by petition. *Longe v. County of Wayne*, 175 Neb. 245, 121 N.W.2d 196 (1963).

Plan of reorganization may be initiated by either county committee or state committee. *School District No. 42 of Hitchcock County v. Marshall*, 160 Neb. 832, 71 N.W.2d 549 (1955).

Reorganization of School Districts Act sustained as constitutional. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

This and subsequent 17 sections provide procedure for reorganization of school districts. *Peterson v. Hancock*, 155 Neb. 801, 54 N.W.2d 85 (1952).

### **79-434 Reorganization of school districts; methods.**

Reorganization of school districts may be accomplished through or by means of any one or more of the following methods: (1) The creation of new districts; (2) the uniting of one or more established districts; (3) the subdivision of one or more established districts; (4) the transfer and attachment to an established district of a part of the territory of one or more districts; (5) the affiliation of a Class I district or portion thereof with one or more Class II, III, IV, or V districts; (6) the changing of boundaries of a Class VI district; and (7) the dissolution or disorganization of an established district for any of the reasons specified by law.

**Source:** Laws 1949, c. 249, § 2, p. 674; Laws 1990, LB 259, § 13; Laws 1991, LB 511, § 22; Laws 1992, LB 245, § 27; R.S.1943, (1994), § 79-426.02; Laws 1996, LB 900, § 183; Laws 2005, LB 126, § 25; Referendum 2006, No. 422.

Former section 79-801.02 is limited to provisions of former section 79-801, and is not applicable to school district boundary changes under other statutes. *Corcoran v. Boone County Board of Equalization*, 196 Neb. 363, 243 N.W.2d 60 (1976).

Uniting of one or more districts can be accomplished by reorganization method. *School District No. 42 of Hitchcock County v. Marshall*, 160 Neb. 832, 71 N.W.2d 549 (1955).

Reorganization of School Districts Act provides reasonable limitations and standards. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

Merger of school districts was subject to election. *Peterson v. Hancock*, 155 Neb. 801, 54 N.W.2d 85 (1952).

### **79-435 State Committee for the Reorganization of School Districts; members; appointment; term; qualifications; expenses.**

The State Committee for the Reorganization of School Districts is created. The state committee shall be composed of six members. The Commissioner of Education shall be a member of the committee ex officio and shall serve as a nonvoting member of the committee. Within thirty days after September 18, 1955, the State Board of Education, by a resolution adopted with the assent of a majority of its members, shall appoint the remaining five members of the state committee, one each for terms of one, two, three, four, and five years respectively. As the term of each member expires, a successor shall be appointed in the same manner for a term of five years. Three members of the state committee shall at all times be laypersons, and two members shall at all times be persons holding teachers' certificates issued by the authority of the State of

Nebraska. Vacancies in the membership of the state committee shall be filled for the unexpired term by appointment in the same manner as the original appointment to membership. Members of the state committee shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties, as provided in sections 81-1174 to 81-1177 and paid from funds appropriated by the Legislature to the office of the State Board of Education. The State Board of Education shall adopt and promulgate rules and regulations for the state committee to carry out its duties as provided by law.

**Source:** Laws 1949, c. 249, § 3, p. 674; Laws 1955, c. 311, § 1, p. 956; Laws 1981, LB 204, § 154; R.S.1943, (1994), § 79-426.03; Laws 1996, LB 900, § 184; Laws 1999, LB 272, § 42; Laws 2005, LB 126, § 26; Referendum 2006, No. 422.

**79-436 State committee; officers; meetings; quorum.**

The state committee shall organize by electing a chairperson and vice-chairperson from its appointive members. The Commissioner of Education shall be secretary of the state committee. Meetings of the state committee shall be held upon the call of the chairperson or any three of the members thereof. A majority of the state committee shall constitute a quorum.

**Source:** Laws 1949, c. 249, § 4, p. 674; Laws 1955, c. 311, § 2, p. 957; R.S.1943, (1994), § 79-426.04; Laws 1996, LB 900, § 185.

**79-437 Repealed. Laws 1999, LB 272, § 118.**

**79-438 Repealed. Laws 1999, LB 272, § 118.**

**79-438.01 Repealed. Laws 1999, LB 272, § 118.**

**79-439 State committee; duties.**

The state committee shall recommend to school districts plans and procedures for the reorganization of school districts within the various counties and shall furnish advice and assistance in connection with such plans and procedures.

**Source:** Laws 1949, c. 249, § 7, p. 676; Laws 1955, c. 311, § 3, p. 957; R.S.1943, (1994), § 79-426.07; Laws 1996, LB 900, § 188; Laws 1999, LB 272, § 43.

State committee has only advisory powers. School District No. 42 of Hitchcock County v. Marshall, 160 Neb. 832, 71 N.W.2d 549 (1955).

State committee provides plans and procedures. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

**79-440 Repealed. Laws 1999, LB 272, § 118.**

**79-441 State committee; plan of reorganization; review.**

(1) In the review of a plan for the reorganization of school districts, the state committee shall give due consideration to (a) the educational needs of local communities, (b) economies in transportation and administration costs, (c) the future use of existing satisfactory school buildings, sites, and play fields, (d) the convenience and welfare of pupils, (e) a reduction in the disparities in per pupil valuation among school districts, (f) the equalization of the educational opportunity of pupils, and (g) any other matters which, in its judgment, are of

importance. The school board proposing the plan of reorganization, in preparation or review of a plan for reorganization, shall take into consideration any advice or suggestions offered by the state committee.

(2) A plan for the reorganization of school districts shall be filed with the state committee. The plan shall, for purposes of submission to the state committee and at the special election provided for in subsection (1) of section 79-447, be the responsibility of the school district which has the largest number of pupils residing in the proposed district.

**Source:** Laws 1949, c. 249, § 9, p. 676; Laws 1951, c. 278, § 4, p. 939; Laws 1953, c. 296, § 1, p. 1001; Laws 1955, c. 310, § 1, p. 954; Laws 1955, c. 311, § 5, p. 959; Laws 1957, c. 342, § 2, p. 1183; Laws 1963, c. 479, § 4, p. 1538; R.S.1943, (1994), § 79-426.09; Laws 1996, LB 900, § 190; Laws 1997, LB 806, § 16; Laws 1999, LB 272, § 44.

Procedure under this section is not the exclusive method for annexing territory or changing the boundaries of school districts. *Moser v. Turner*, 180 Neb. 635, 144 N.W.2d 192 (1966).

Territory may be annexed upon joint action of county committees. *Frankforter v. Turner*, 175 Neb. 252, 121 N.W.2d 377 (1963).

Plan for reorganization of school districts was prepared under this section. *Longe v. County of Wayne*, 175 Neb. 245, 121 N.W.2d 196 (1963).

This section authorizes the county committee to formulate plans for changes. *Arends v. Whitten*, 172 Neb. 297, 109 N.W.2d 363 (1961).

Organization of objecting district into separate voting unit was not required. *School District No. 49 of Lincoln County v. School District No. 65-R of Lincoln County*, 159 Neb. 262, 66 N.W.2d 561 (1954).

County committee prepares initial plan. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

### **79-442 State committee; plan of reorganization; public hearings; notice.**

Before any plan of reorganization is completed or approved by the state committee, it shall hold one or more public hearings. At such hearings, it shall hear any and all persons interested with respect to (1) the merits of proposed reorganization plans, (2) the value and amount of all school property of whatever nature involved in the proposed action, (3) the amount of outstanding indebtedness of each district and proposed disposition thereof, and (4) the equitable adjustment of all property, debts, and liabilities among the districts involved. The state committee shall keep a record of all hearings in the formulation or approval of plans for the reorganization of school districts. Notice of such public hearings of the state committee shall be given by publication in a legal newspaper of general circulation in the county or counties in which the affected districts are located at least ten days prior to such hearing.

**Source:** Laws 1949, c. 249, § 10, p. 677; Laws 1963, c. 479, § 5, p. 1539; R.S.1943, (1994), § 79-426.10; Laws 1996, LB 900, § 191; Laws 1997, LB 806, § 17; Laws 1999, LB 272, § 45; Laws 2001, LB 797, § 9.

This section provides for a public hearing before the completion of a plan of reorganization. *Arends v. Whitten*, 172 Neb. 297, 109 N.W.2d 363 (1961).

Omission from record of items not specifically required to be kept was not a fatal defect. *School District No. 49 of Lincoln*

*County v. School District No. 65-R of Lincoln County*, 159 Neb. 262, 66 N.W.2d 561 (1954).

Notice and hearing on plan is provided. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

### **79-443 State committee; plan of reorganization; contents.**

After one or more public hearings have been held, the state committee may approve a plan or plans of reorganization. Such plan shall contain:

- (1) A description of the proposed boundaries of the reorganized districts;
- (2) A summary of the reasons for each proposed change, realignment, or adjustment of the boundaries. If such plan provides for the creation of a new

Class VI district, it shall designate whether such district shall include high school grades only or be known as a Class VI junior-senior high school district as described in section 79-411;

(3) A summary of the terms on which reorganization is to be made between the reorganized districts. Such terms shall include a provision for initial school board districts or wards within the proposed district, which proposed initial school board districts or wards shall be determined by the state committee taking into consideration population and valuation, a determination of the number of members to be appointed to the initial school board for Class II and III school districts, and a determination of the terms of the board members first appointed to membership on the board of the newly reorganized district;

(4) A separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization;

(5) A statement of the findings with respect to the location of schools, the utilization of existing buildings, the construction of new buildings, and the transportation requirements under the proposed plan of reorganization. The plan may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under this section shall be maintained from the date of reorganization unless the legal voters served by the school vote by a majority vote for discontinuance of the school;

(6) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization; and

(7) Such other matters as the state committee determines proper to be included.

**Source:** Laws 1949, c. 249, § 11, p. 677; Laws 1963, c. 480, § 1, p. 1546; Laws 1963, c. 479, § 6, p. 1540; Laws 1985, LB 662, § 28; R.S.1943, (1994), § 79-426.11; Laws 1996, LB 900, § 192; Laws 1997, LB 806, § 18; Laws 1999, LB 272, § 46; Laws 2005, LB 126, § 27; Referendum 2006, No. 422; Laws 2014, LB946, § 36. Operative date January 1, 2015.

This section specifies what a plan of reorganization shall contain. *Arends v. Whitten*, 172 Neb. 297, 109 N.W.2d 363 (1961). County committee prepares plan of reorganization. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

#### **79-444 Plan of reorganization; territory included; state committee; procedure.**

Territory included in a plan of reorganization adopted by the state committee shall remain a part of the plan until an election is held as provided in section 79-447. The state committee shall, within thirty days after holding the hearings provided for in section 79-442, notify the school districts whether or not it approves or disapproves such plan or plans.

**Source:** Laws 1949, c. 249, § 12, p. 677; Laws 1951, c. 278, § 5, p. 940; Laws 1959, c. 387, § 2, p. 1341; Laws 1963, c. 479, § 7, p. 1541; R.S.1943, (1994), § 79-426.12; Laws 1996, LB 900, § 193; Laws 1997, LB 806, § 19; Laws 1999, LB 272, § 47.

This section provides for submission of plan to state committee if authorized by a majority vote of county committee. *Arends v. Whitten*, 172 Neb. 297, 109 N.W.2d 363 (1961). State committee has only advisory powers. *School District No. 42 of Hitchcock County v. Marshall*, 160 Neb. 832, 71 N.W.2d 549 (1955).

State committee reviews plan of reorganization. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

### **79-445 Plan of reorganization; state committee; disapproval; effect.**

If the state committee disapproves the plan, it shall be considered a disapproved plan, shall be returned to the school districts as a disapproved plan, and shall not be submitted to a special election.

**Source:** Laws 1949, c. 249, § 14, p. 678; R.S.1943, (1994), § 79-426.14; Laws 1996, LB 900, § 194; Laws 1997, LB 806, § 20; Laws 1999, LB 272, § 48.

This section provides that county committee may accept or reject recommendations of state committee. Arends v. Whitten, 172 Neb. 297, 109 N.W.2d 363 (1961).

School District No. 65-R of Lincoln County, 159 Neb. 262, 66 N.W.2d 561 (1954).

Special election may be held at any convenient place in proposed district. School District No. 49 of Lincoln County v.

### **79-446 Plan of reorganization; approval; special election.**

When a plan of reorganization or any part thereof has been approved by the state committee, it shall be designated as the final approved plan and shall be returned to the school districts to be submitted to a vote as provided in section 79-447.

**Source:** Laws 1949, c. 249, § 13, p. 678; Laws 1963, c. 479, § 8, p. 1542; R.S.1943, (1994), § 79-426.13; Laws 1996, LB 900, § 195; Laws 1997, LB 806, § 21; Laws 1999, LB 272, § 49.

Contest of special election under this section is authorized. Arends v. Whitten, 172 Neb. 297, 109 N.W.2d 363 (1961).

County committee submits plan of reorganization at special election. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

### **79-447 Plan of reorganization; special election; notice; contents; conduct; separate voting units; approval of plan.**

(1) Not less than thirty nor more than sixty days after the designation of a final approved plan under section 79-446, the proposition of the adoption or rejection of the proposed plan of reorganization shall be submitted at a special election to all the legal voters of districts within the county whose boundaries are in any manner changed by the plan of reorganization, including the boundaries of Class VI school districts if such plan includes a Class I school district which is entirely within a Class VI school district.

(2) Notice of the special election shall be given by the county clerk or election commissioner and shall be published in a legal newspaper of general circulation in the county at least ten days prior to the election. The election notice shall (a) state that the election has been called for the purpose of affording the legal voters an opportunity to approve or reject the plan of reorganization, (b) contain a description of the boundaries of the proposed district, and (c) contain a statement of the terms of the adjustment of property, debts, and liabilities applicable thereto.

(3) All ballots shall be prepared and the special election shall be held and conducted by the county clerk or election commissioner, and the expense of such election shall be paid by the county board or boards if more than one county is involved as provided in subsection (4) of this section. The county clerk or election commissioner shall use the duly appointed election board or appoint two judges and two clerks who shall be legal voters of the territory of the proposed school district. The election shall be held at a place or places within

the proposed district determined by the county clerk or election commissioner to be convenient for the voters.

(4) If the proposed plan of reorganization involves a district under the jurisdiction of another county, the county clerk or election commissioner of the county which has the largest number of pupils residing in the proposed joint district shall give the notice required by subsection (2) of this section in a newspaper of general circulation in the territory of the proposed district and prepare the ballots and such election shall be held and conducted by the county clerk or election commissioner of each county involved in the proposed reorganization in accordance with the Election Act. Each county board shall bear a share of the total election expense in the same proportion that the number of legal voters residing in the proposed district in one county stands to the whole number of legal voters in the proposed district.

(5) In any election held as provided in this section, all districts of like class shall vote as a unit, except that Class I school districts within the boundaries of which are located an incorporated village or city shall constitute a separate voting unit and Class I school districts which do not have within their boundaries an incorporated village or city shall constitute a separate voting unit.

(6) Approval of the plan at the special election shall require a majority of all legal voters voting within each voting unit included in the proposed plan.

**Source:** Laws 1949, c. 249, § 15, p. 678; Laws 1951, c. 278, § 6, p. 941; Laws 1953, c. 297, § 1, p. 1003; Laws 1955, c. 311, § 6, p. 960; Laws 1957, c. 342, § 3, p. 1184; Laws 1963, c. 480, § 2, p. 1547; Laws 1963, c. 479, § 9, p. 1542; Laws 1972, LB 661, § 80; Laws 1994, LB 76, § 592; R.S.1943, (1994), § 79-426.15; Laws 1996, LB 900, § 196; Laws 1997, LB 345, § 13; Laws 1999, LB 272, § 50; Laws 2005, LB 126, § 28; Referendum 2006, No. 422.

#### Cross References

**Election Act**, see section 32-101.

Under the election method of reorganization, it is the final special election which causes the reorganization, and requirements relating to notice and hearings are not jurisdictional and will not be strictly enforced after the election, in absence of some showing that the electors were prevented from exercising their free will. *Eriksen v. Ray*, 212 Neb. 8, 321 N.W.2d 59 (1982).

Procedure under this section is not the exclusive method for annexing territory or changing the boundaries of school districts. *Moser v. Turner*, 180 Neb. 635, 144 N.W.2d 192 (1966).

Special election under this section is governed by the general election laws. *Longe v. County of Wayne*, 175 Neb. 245, 121 N.W.2d 196 (1963).

Election held under this section is subject to contest under general election laws. *Arends v. Whitten*, 172 Neb. 297, 109 N.W.2d 363 (1961).

Conduct of election is placed in charge of election officials holding general elections. *Farrell v. School Dist. No. 54 of Lincoln County*, 164 Neb. 853, 84 N.W.2d 126 (1957).

Constitutionality of unit system of voting sustained. *School District No. 49 of Lincoln County v. School District No. 65-R of Lincoln County*, 159 Neb. 262, 66 N.W.2d 561 (1954).

Power to change existing school districts is left with the electorate. *Nickel v. School Board of Axtell*, 157 Neb. 813, 61 N.W.2d 566 (1953).

Electoral consent of districts involved is necessary to adoption of plan of reorganization. *Peterson v. Hancock*, 155 Neb. 801, 54 N.W.2d 85 (1952).

### **79-448 Plan of reorganization; disapproval of plan; continuance of efforts; revised plan; approval.**

If the majority vote in each voting unit at the election described in section 79-447 is not in favor of the plan of reorganization, the school districts may continue in their efforts in an attempt to prepare a revised plan which might be acceptable. If a revised plan is approved by the school districts, it shall be submitted for the approval of the state committee, and if approved by the state

committee it shall be submitted to a vote under the procedure provided in section 79-447.

**Source:** Laws 1963, c. 479, § 10, p. 1544; R.S.1943, (1994), § 79-426.16; Laws 1996, LB 900, § 197; Laws 1999, LB 272, § 51.

**79-449 Plan of reorganization; two or more districts; indebtedness.**

Whenever two or more school districts are involved in a reorganization plan, the old districts shall continue to be responsible for any indebtedness incurred before the reorganization takes place unless a different arrangement is included in the plan voted upon by the people. Bonded indebtedness incurred for high school facilities prior to the adoption of any affiliation plan shall remain the obligation of the high school district unless otherwise specified in the petitions.

**Source:** Laws 1949, c. 249, § 16, p. 679; Laws 1959, c. 387, § 3, p. 1341; R.S.Supp.,1961, § 79-426.16; Laws 1963, c. 479, § 11, p. 1544; Laws 1971, LB 292, § 6; Laws 1990, LB 259, § 15; R.S.1943, (1994), § 79-426.17; Laws 1996, LB 900, § 198; Laws 2005, LB 126, § 29; Referendum 2006, No. 422.

**79-450 Plan of reorganization; adoption; county clerk; duties.**

If the plan of reorganization is adopted, the county clerk shall proceed to cause the changes, realignment, and adjustment of districts to be carried out as provided in the plan. The county clerk shall classify the school districts according to the law applicable to the size, location, and population of the reorganized district. He or she shall also file certificates with the county assessor, county treasurer, and state committee showing the boundaries of the various districts under the plan of reorganization adopted.

**Source:** Laws 1949, c. 249, § 17, p. 679; R.R.S.1943, § 79-426.17; Laws 1963, c. 479, § 12, p. 1544; R.S.1943, (1994), § 79-426.18; Laws 1996, LB 900, § 199; Laws 1999, LB 272, § 52.

Former section 79-801.02 is limited to provisions of former section 79-801, and is not applicable to school district boundary changes under other statutes. *Corcoran v. Boone County Board of Equalization*, 196 Neb. 363, 243 N.W.2d 60 (1976).

Action of county superintendent under this section is ministerial only. *Longe v. County of Wayne*, 175 Neb. 245, 121 N.W.2d 196 (1963).

**79-451 New school district; state committee; appoint board; members; appointment; election; terms; duties.**

Within thirty days after the classification of the reorganized school districts by the county clerk under section 79-450, the state committee shall appoint from among the legal voters of each new school district created the number of school board members specified in the plan of reorganization. A reorganized school district shall be formed and organized and shall have a school board not later than April 1 following the last legal action, as prescribed in section 79-450, necessary to effect the changes in boundaries as set forth in the plan of reorganization, although the physical reorganization of such reorganized school district may not take effect until June 1. The first board shall be appointed on an at-large basis, and all boards shall be elected at large until such time as school districts are established as provided in section 32-554.

In appointing the first school board of a Class II school district, the members shall be appointed so that the terms of approximately one-half of the members expire on the date of the first regular meeting of the board in January after the

first even-numbered year following their appointment and the terms of the remaining members expire on the date of the first regular meeting of the board in January after the second even-numbered year following their appointment. At the statewide general election in the first even-numbered year after the reorganization, approximately one-half of the board members in each Class II school district shall be elected to terms of four years, and thereafter all candidates shall be elected to terms of four years. Each member's term shall begin on the date of the first regular meeting of the board in January following his or her election.

In appointing the first school board of a Class III school district, the terms of approximately one-half of the members shall expire on the first Thursday after the first Tuesday in January after the first even-numbered year following their appointment and the terms of the remaining members shall expire on the first Thursday after the first Tuesday in January after the second even-numbered year following their appointment.

The school board so appointed shall proceed at once to organize in the manner prescribed by law.

**Source:** Laws 1949, c. 249, § 18, p. 679; Laws 1955, c. 311, § 7, p. 962; R.R.S.1943, (1958), § 79-426.18; Laws 1963, c. 479, § 13, p. 1545; Laws 1973, LB 557, § 6; Laws 1974, LB 592, § 1; Laws 1988, LB 520, § 2; Laws 1991, LB 789, § 10; Laws 1991, LB 511, § 23; Laws 1992, LB 245, § 28; Laws 1994, LB 76, § 593; R.S.1943, (1994), § 79-426.19; Laws 1996, LB 900, § 200; Laws 1996, LB 967, § 3; Laws 1997, LB 345, § 14; Laws 1999, LB 272, § 53; Laws 2014, LB946, § 37.  
Operative date January 1, 2015.

#### (e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS

##### **79-452 Dissolution of Class I or II school district; petition; sufficient signatures; effect; plan of reorganization.**

A proposal to dissolve a Class I or II school district, except a Class I school district which is partly or wholly within a Class VI school district, and attach it to one or more existing Class II, III, or IV school districts that are not members of a learning community may be initiated by filing with the State Committee for the Reorganization of School Districts a petition or petitions signed by at least twenty-five percent of the legal voters of the district, together with an affidavit from the county clerk or election commissioner listing all legal voters of the district and a determination by the county clerk or election commissioner that the signatures are sufficient. The petition shall contain a plan of the proposed reorganization, an effective date, and a statement whether any existing bonded indebtedness shall remain on the property of the district which incurred it or be assumed by the enlarged district. The petition may also contain provisions for the holding of school within existing buildings in the proposed reorganized district, and when so provided, the holding of school within such buildings shall be maintained from the date of reorganization unless either the legal voters served by the school or the school board of the reorganized district votes by a majority vote for discontinuance of the school. In case of conflicting votes between the legal voters and the school board on such issue, the decision of the legal voters shall prevail. A signing petitioner shall not be permitted to withdraw his or her name from the petition after the petition has been filed. The

school board of each Class II, III, or IV district to which the merger is proposed shall also submit to the state committee a statement to the effect that a majority of the board members approve the proposal contained in the petition.

**Source:** Laws 1965, c. 510, § 1, p. 1629; Laws 1967, c. 530, § 1, p. 1761; Laws 1967, c. 531, § 1, p. 1764; Laws 1985, LB 662, § 29; R.S.1943, (1994), § 79-426.23; Laws 1996, LB 900, § 201; Laws 1999, LB 272, § 54; Laws 2005, LB 126, § 30; Laws 2006, LB 1024, § 42; Referendum 2006, No. 422.

Plan for voluntary merger of school districts ceases to be available when provisions for mandatory dissolution of district are applicable and have been invoked. *Nelson v. Robertson*, 187 Neb. 192, 188 N.W.2d 720 (1971).

The 1965 amendment of section independent of other statutes relating to same subject. *Hall v. Simpson*, 184 Neb. 762, 171 N.W.2d 805 (1969).

### **79-453 State committee; review proposal; approve or disapprove; effect.**

The State Committee for the Reorganization of School Districts shall, within forty days after receipt of the proposal as provided in section 79-452, review and approve or disapprove the proposal and return to the school districts a statement of its decision. If the state committee disapproves the proposal, no further action shall be taken in regard to it and it shall not be resubmitted in substance for a period of six months from the date it was filed with the state committee.

**Source:** Laws 1965, c. 510, § 2, p. 1630; R.S.1943, (1994), § 79-426.24; Laws 1996, LB 900, § 202; Laws 1999, LB 272, § 55.

### **79-454 Proposal; state committee; approve; election; notice.**

If the proposal provided for in section 79-452 has been approved by the State Committee for the Reorganization of School Districts, the state committee shall notify the school board of the Class I or II district. The school board shall, within fifteen days after the notification, set a date for a special election for the purpose of submitting the proposal to the legal voters of the district. At least twenty days' notice of such election shall be given by publication twice in a newspaper of general circulation in the district, the latest publication to be not more than one week before the election. If there is no such newspaper, notice shall be given by posting it on the door of the schoolhouse and at least four other public places throughout the district. The proposal shall not be submitted to a special election more than once in any calendar year. Legal voters may cast their ballots, written or printed, between the hours of 12 noon and 8 p.m. on the date of such election. The county clerk or election commissioner of the county which has the largest number of pupils residing in the district shall conduct such special election in accordance with the Election Act and shall record the names and residence of persons voting at the special election. The ballots shall be canvassed as provided in section 79-447.

**Source:** Laws 1965, c. 510, § 3, p. 1630; Laws 1967, c. 530, § 2, p. 1762; Laws 1972, LB 661, § 81; Laws 1985, LB 662, § 30; Laws 1994, LB 76, § 594; R.S.1943, (1994), § 79-426.25; Laws 1996, LB 900, § 203; Laws 1999, LB 272, § 56; Laws 2005, LB 126, § 31; Referendum 2006, No. 422.

#### **Cross References**

**Election Act**, see section 32-101.

Lack of preelection hearing on sufficiency of petitions did not violate due process. *Hall v. Simpson*, 184 Neb. 762, 171 N.W.2d 805 (1969).

**79-455 Proposal; election; approve; county clerk; order; certificate; filing; appeal.**

If the proposal provided for in section 79-452 is approved by a majority of the legal voters of the school district voting on the matter, the secretary of the school board shall within five days certify the approval to the county clerk. The county clerk shall immediately notify the secretary of each Class II, III, IV, or V district affected of the action taken by the Class I or II district, and such secretary shall within ten days certify to the county clerk that the school board of the Class II, III, IV, or V district has, by a majority vote, officially approved the proposal as provided in section 79-452. The county clerk shall issue an order effecting the changes in school district boundaries in accordance with the proposal provided in section 79-452. He or she shall also file certificates with the county assessor, county treasurer, and State Committee for the Reorganization of School Districts showing the changes. An appeal may be taken from such order within twenty days after the rendition of the order in the same manner as appeals are taken from the action of the county board in allowing or disallowing claims against the county. Such appeal shall be filed in the district court for the county whose county clerk has jurisdiction of the Class I or II district. When more than one county clerk has jurisdiction of the Class I or II district, the appeal may be filed in the district court for either of the counties.

**Source:** Laws 1965, c. 510, § 4, p. 1631; Laws 1967, c. 530, § 3, p. 1763; Laws 1985, LB 662, § 31; R.S.1943, (1994), § 79-426.26; Laws 1996, LB 900, § 204; Laws 1999, LB 272, § 57; Laws 2005, LB 126, § 32; Referendum 2006, No. 422.

**Cross References**

For appeal from action of county board on claim, see section 23-135.

(f) FREEHOLDERS' PETITIONS

**79-456 Repealed. Laws 1997, LB 347, § 59.**

**79-457 Repealed. Laws 1997, LB 347, § 59.**

**79-458 School district; tract of land set off from district; petition; conditions; procedure; appeal.**

(1) Any freeholder or freeholders, person in possession or constructive possession as vendee pursuant to a contract of sale of the fee, holder of a school land lease under section 72-232, or entrant upon government land who has not yet received a patent therefor may file a petition on or before June 1 for all other years with a board consisting of the county assessor, county clerk, and county treasurer, asking to have any tract or tracts of land described in the petition set off from an existing school district in which the land is situated and attached to a different school district which is contiguous to such tract or tracts of land if:

(a)(i) The school district in which the land is situated is a Class II or III school district which has had an average daily membership in grades nine through twelve of less than sixty for the two consecutive school fiscal years immediately preceding the filing of the petition;

(ii) Such Class II or III school district has voted pursuant to section 77-3444 to exceed the maximum levy established pursuant to subdivision (2)(a) of section 77-3442, which vote is effective for the school fiscal year in which the petition is filed or for the following school fiscal year;

(iii) The high school in such Class II or III school district is within fifteen miles on a maintained public highway or maintained public road of another public high school; and

(iv) Neither school district is a member of a learning community; or

(b) Except as provided in subsection (7) of this section, the school district in which the land is situated, regardless of the class of school district, has approved a budget for the school fiscal year in which the petition is filed that will cause the combined levies for such school fiscal year, except levies for bonded indebtedness approved by the voters of such school district and levies for the refinancing of such bonded indebtedness, to exceed the greater of (i) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (ii) the maximum levy authorized by a vote pursuant to section 77-3444.

For purposes of determining whether a tract of land is contiguous, all petitions currently being considered by the board shall be considered together as a whole.

(2) The petition shall state the reasons for the proposed change and shall show with reference to the land of each petitioner: (a) That (i) the land described in the petition is either owned by the petitioner or petitioners or that he, she, or they hold a school land lease under section 72-232, are in possession or constructive possession as vendee under a contract of sale of the fee simple interest, or have made an entry on government land but have not yet received a patent therefor and (ii) such tract of land includes all such contiguous land owned or controlled by each petitioner; (b) that the conditions of subdivision (1)(a) or (1)(b) of this section have been met; and (c) that such petition is approved by a majority of the members of the school board of the district to which such land is sought to be attached.

(3) The petition shall be verified by the oath of each petitioner. Notice of the filing of the petition and of the hearing on such petition before the board constituted as prescribed in subsection (1) or (4) of this section shall be given at least ten days prior to the date of such hearing by one publication in a legal newspaper of general circulation in each district and by posting a notice on the outer door of the schoolhouse in each district affected thereby, and such notice shall designate the territory to be transferred. Following the filing of a petition pursuant to this section, such board shall hold a public hearing on the petition and shall approve or disapprove the petition on or before July 15 following the filing of the petition based on a determination of whether the petitioner has complied with all requirements of this section. If such board approves the petition, such board shall change the boundaries of the school districts so as to set off the land described in the petition and attach it to such district pursuant to the petition with an effective date of August 15 following the filing of the petition, which actions shall cause such transfer to be in effect for levies set for the year in which such transfer takes effect.

(4) Petitions requesting transfers of property across county lines shall be addressed jointly to the county clerks of the counties concerned, and the petitions shall be acted upon by the county assessors, county clerks, and county

treasurers of the counties involved as one board, with the county clerk of the county from which the land is sought to be transferred acting as chairperson of the board.

(5) Appeals may be taken from the action of such board or, when such board fails to act on the petition, on or before August 1 following the filing of the petition, to the district court of the county in which the land is located on or before August 10 following the filing of the petition, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. If an appeal is taken from the action of the board approving the petition or failing to act on the petition, the transfer shall occur effective August 15 following the filing of the petition, which actions shall cause such transfer to be in effect for levies set for the year in which such transfer takes effect, unless action by the district court prevents such transfer.

(6) This section does not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(7) For school districts that have approved a budget for school fiscal year 2007-08 that will cause the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, to exceed the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, the school boards of such school districts may adopt a binding resolution stating that the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, for school fiscal year 2008-09 shall not exceed the greater of (i) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (ii) the maximum levy authorized by a vote pursuant to section 77-3444. On or before May 9, 2008, such binding resolutions shall be filed with the Auditor of Public Accounts and the county assessors, county clerks, and county treasurers for all counties in which the school district has territory. If such binding resolution is filed on or before May 9, 2008, land shall not be set off and attached to another district pursuant to subdivision (2)(b) of this section in 2008.

(8) Nothing in this section shall be construed to detach obligations for voter-approved bonds from any tract of land.

**Source:** Laws 1996, LB 900, § 207; Laws 1997, LB 710, § 3; Laws 1997, LB 806, § 22; Laws 1998, Spec. Sess., LB 1, § 11; Laws 1999, LB 272, § 58; Laws 2001, LB 797, § 10; Laws 2006, LB 1024, § 43; Laws 2007, LB219, § 1; Laws 2008, LB988, § 4.

#### Cross References

For appeal from action of county board on claim, see section 23-135.

1. Appeal
2. Procedure
3. Miscellaneous

#### 1. Appeal

A party filing a petition under this section has a direct and legal interest in an appeal filed with the district court objecting to the granting of that petition. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

The action of the statutory board under this section (repealed section 79-456) is an exercise of quasi-judicial power, equitable

in character, and upon appeal therefrom to the district court, the cause is triable de novo as though it had been originally instituted in such court, and upon appeal from the district court to this court, it is triable de novo as in any other equitable action. In *re Plummer Freeholder Petition*, 229 Neb. 520, 428 N.W.2d 163 (1988).

An appeal taken from action of the State Board of Education pursuant to subsection (1) of this section (repealed section 79-456) must be taken within twenty days from the date that the board votes to transfer the land, rather than from the time it approves a formal memorandum. Such appeals are filed in the district court where the land is located rather than where the action is taken by the board. In re Covault Freeholder Petition, 218 Neb. 763, 359 N.W.2d 349 (1984).

The action of the statutory board created under subsection (2) of this section (repealed section 79-456) is an exercise of quasi-judicial power, equitable in character, and on appeal therefrom to the district court the cause is triable de novo as though it had originally been instituted in such court. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal. In re Covault Freeholder Petition, 218 Neb. 763, 359 N.W.2d 349 (1984).

A school district has no standing to appeal in cases of transfers by freehold petitioners which involve only the property of the petitioners, nor can an intervenor entering after the time for appeal has lapsed be substituted as an appellant. In re Hilbers Property Freehold Transfer, 211 Neb. 268, 318 N.W.2d 265 (1982).

An appeal from action taken under this section is tried de novo in the Supreme Court. The establishment of the amount of tuition required to be paid by the parents or guardians under subsection (1) of this section (repealed section 79-456) is left to the sole discretion of the local board of education of the adjoining district under former section 79-445. In re Freeholder's Petition, 210 Neb. 839, 317 N.W.2d 91 (1982).

Matters to be considered in determining whether or not a requested transfer of land from one school district to another should be permitted are set out and upon appeal trial is de novo as in equity. Klecan v. Schmal, 196 Neb. 100, 241 N.W.2d 529 (1976).

A freeholder's petition hereunder to transfer land from one school district to another must be supported by adequate showing that best educative rather than noneducative interest of petitioner will be served and, after hearing by board, trial and appeal are conducted as in any other equitable action. Friesen v. Clark, 192 Neb. 227, 220 N.W.2d 12 (1974).

Method of giving notice of appeal in this particular case from freeholders' board, in a county where by law county clerk is ex officio clerk of the district court, held sufficient. Elson v. Harbert, 190 Neb. 437, 208 N.W.2d 703 (1973).

Provisions for appealing from order of justice of the peace or county court not applicable to appeals under this section. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Appeal from action of freeholders' board may be taken to district court in same manner as an appeal from the allowance of claims against a county. Reiber v. Harris, 179 Neb. 582, 139 N.W.2d 353 (1966).

In conferring right of appeal, procedure was prescribed. McDonald v. Rentfrow, 171 Neb. 479, 106 N.W.2d 682 (1960).

Where no final order by board was made, appeal therefrom should be dismissed. School Dist. No. 98 of Cedar County v. Elliott, 90 Neb. 89, 132 N.W. 922 (1911).

## 2. Procedure

Under subsection (5) of this section, appeals from a freeholder board must be filed by August 10 when the board either acted or failed to act on a petition by August 1. Butler Cty. Sch. Dist. v. Freeholder Petitioners, 283 Neb. 903, 814 N.W.2d 724 (2012).

Deficiencies in a petition filed under this section do not necessarily defeat the jurisdiction of a freeholder board. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

In determining whether land is contiguous under this section, a freeholder board shall consider all petitions together in order to find that otherwise noncontiguous land is nevertheless contiguous. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

The petitioners for the transfer of land from one school district to another school district have the burden of proving by a preponderance of the evidence each of the statutory requirements for such transfer provided in this section (repealed section 79-456). Roelfs v. Specht, 203 Neb. 448, 279 N.W.2d 124 (1979).

Petition hereunder to detach land from school district is not a pending action preserved by general savings clause. Clark v. Sweet, 187 Neb. 232, 188 N.W.2d 889 (1971).

Sufficiency of petition being first attacked at time of filing motion for new trial, it will be liberally construed; allegation that land involved is in nonaccredited school district and is to be attached to an accredited school district is sufficient to state a cause of action. Bader v. Hodwalker, 187 Neb. 138, 187 N.W.2d 645 (1971).

Unless proof of giving notice as required by this section (repealed section 79-456) appears in the bill of exceptions, action of the board granting request for change of boundaries will be held void for want of jurisdiction. Endorf v. School Dist. No. 303 of Thayer County, 186 Neb. 167, 181 N.W.2d 445 (1970).

This section (repealed section 79-456) provides for the transfer of land between school districts upon the petition of a freeholder. Pribil v. French, 179 Neb. 602, 139 N.W.2d 356 (1966).

Subsection (2) of this section (repealed section 79-456) prescribes the standards necessary to permit the transfer of land from a nonaccredited to an accredited high school district. De Jonge v. School Dist. of Bloomington, 179 Neb. 539, 139 N.W.2d 296 (1966).

Giving of notice of hearing on petition for change of boundaries is essential to validity of proceedings. Everts v. School Dist. No. 16 of Fillmore County, 175 Neb. 310, 121 N.W.2d 487 (1963).

In order to give board jurisdiction, petition must be filed and notice given. State ex rel. School Dist. No. 1 of Sioux County v. School Dist. No. 19 of Sioux County, 42 Neb. 499, 60 N.W. 912 (1894).

Petition is required, and oral request is not sufficient. State ex rel. McLane v. Compton, 28 Neb. 485, 44 N.W. 660 (1890).

## 3. Miscellaneous

Where all of the acts necessary to effect accreditation of a school district have been met prior to the statutory board's ordering the transfer, and, in fact, formal accreditation is granted prior to the time the children begin school and prior to the time the district court acts on the appeal, the issue of accreditation must be considered to have become moot. In re Covault Freeholder Petition, 218 Neb. 763, 359 N.W.2d 349 (1984).

An error in the description contained in a petition to alter a school district boundary under this section will not invalidate the petition where it is clear from a reading of the entire petition what land is intended. Schilke v. School Dist. No. 107 of Saunders County, 207 Neb. 448, 299 N.W.2d 527 (1980).

Former section 79-801.02 is limited to provisions of former section 79-801, and is not applicable to school district boundary changes under other statutes. Corcoran v. Boone County Board of Equalization, 196 Neb. 363, 243 N.W.2d 60 (1976).

Amendment by L.B. 1378 (1969) in effect when board acted held constitutional and applicable rather than L.B. 798 (1969) which became effective after board acted. Kaup v. Sweet, 187 Neb. 226, 188 N.W.2d 891 (1971).

School district maintaining nonaccredited high school grades is a nonaccredited high school district. Schwanebeck v. Brunkner, 183 Neb. 519, 162 N.W.2d 225 (1968).

Proviso in this section did not provide an independent and sole ground for transfer. Johnson v. School Dist. of Wakefield, 181 Neb. 372, 148 N.W.2d 592 (1967).

Deputy county officer cannot serve as a member of the board. Monson v. Neidig, 180 Neb. 818, 146 N.W.2d 198 (1966).

Subsection (2) of this section (repealed section 79-456) sustained as constitutional. *Ebberson v. School Dist. No. 64 of Cedar County*, 180 Neb. 119, 141 N.W.2d 452 (1966).

This section did not unconstitutionally delegate legislative powers to the courts. *McDonald v. Rentfrow*, 176 Neb. 796, 127 N.W.2d 480 (1964).

Contention that wrong section (repealed section 79-456) was attempted to be amended raised but not decided. *State ex rel. Bottolfson v. School Board of School Dist. No. R1 of Cedar and Dixon Counties*, 170 Neb. 417, 103 N.W.2d 146 (1960).

Action of board is quasi-judicial in nature. *Roy v. Bladen School Dist. No. R-31*, 165 Neb. 170, 84 N.W.2d 119 (1957).

Reasonably improved highway means sufficiently improved to meet normal demands of children of school age. *School Dist. No. 228 of Holt County v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

This section was not applicable to supply standards in cases arising before its enactment. *School Dist. No. 39 of Washington County v. Decker*, 159 Neb. 693, 68 N.W.2d 354 (1955).

Courts have no power to enforce public policy by attaching territory to school district without affirmative action required by statute and cannot assume that territory which might or should have been added to school district was added where record shows it was not. *Sioux City Bridge Co. v. Miller*, 12 F.2d 41 (8th Cir. 1926).

### **79-458.01 Property encapsulated by school district; transfer; procedure.**

Any landowner or group of landowners whose property is a part of a school district and is encapsulated by another school district may, upon filing a notarized affidavit with the county assessor, have such property become a part of the school district by which it is encapsulated if neither school district is a member of a learning community. The transfer shall take place on January 1 next following the filing of the affidavit. Any student resident of such property shall be counted as a resident of the district from which the property was transferred until the close of the school year in which the transfer becomes effective.

For purposes of this section, encapsulated by means entirely within.

**Source:** Laws 1997, LB 806, § 26; Laws 2006, LB 1024, § 44.

### **79-459 Repealed. Laws 1997, LB 347, § 59.**

#### **(g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION AND ANNEXATION OF SCHOOL DISTRICTS**

### **79-460 Repealed. Laws 1999, LB 272, § 118.**

### **79-461 Repealed. Laws 1999, LB 272, § 118.**

### **79-462 Repealed. Laws 1999, LB 272, § 118.**

### **79-463 Repealed. Laws 1999, LB 272, § 118.**

### **79-464 Repealed. Laws 1999, LB 272, § 118.**

### **79-465 Repealed. Laws 1999, LB 272, § 118.**

### **79-466 Repealed. Laws 1999, LB 272, § 118.**

### **79-467 District; reduced taxable valuation by purchase or appropriation by federal government; exclusion of such land; formation of new district.**

Whenever (1) a school district that is not a member of a learning community suffers a reduction in the taxable valuation of the real property within the district by reason of the purchase or appropriation by the United States or any instrumentality of the United States of land in the district for any defense, flood control, irrigation, or war project, (2) the number of children who are five through twenty years of age residing in the district increases by reason of the use by the United States of the land so purchased or appropriated for such purposes, and (3) such increase in the number of pupils who will be eligible to attend school in the district does or will require a levy of taxes for general

school purposes in excess of the average levy for general school purposes of school districts of the same class in the county, the State Committee for the Reorganization of School Districts shall change the boundaries of the existing district to exclude all land purchased and appropriated by the United States and all land which by reason of its use or ownership is exempt from state taxation under the United States Constitution and the statutes of the United States. When the United States, by the appropriate officer, does not accept or has not accepted exclusive jurisdiction over land so excluded, the state committee shall form a new school district embracing land thus excluded.

**Source:** Laws 1951, c. 277, § 1(4), p. 936; Laws 1979, LB 187, § 222; Laws 1990, LB 1090, § 4; Laws 1992, LB 719A, § 179; R.S.1943, (1994), § 79-408.03; Laws 1996, LB 900, § 216; Laws 1999, LB 272, § 59; Laws 2006, LB 1024, § 45.

**79-468 City of second class or village; merger with city of primary class; existing school districts; merger; obligations; how discharged.**

(1) Whenever a city of the second class, a village, or a ward of a city of the second class or village is consolidated according to law with a city of the primary class, the territory so consolidated shall become annexed to and merged into the school district of such city of the primary class if such territory is in a school district that is not a member of a learning community and the school district of such city of the primary class is not a member of a learning community. All laws, rules, and regulations governing the school district and schools of such city of the primary class shall apply to the district and schools within the territory annexed to it. The school district into which the others in whole or in part are merged shall succeed to all the property, contracts, and obligations of each and all of the school districts so merged into it, in whole or in part, and shall assume all of their valid contracts and obligations.

(2) If one or more wards, but less than all wards, of a city of the second class or of a village become consolidated with such city of the primary class, the school district into which such territory is merged shall assume such portion of all valid contracts and obligations of the school district of which such territory before the consolidation was a part as the taxable valuation of all the property of the territory thus merged with the school district of such city of the primary class bears to the total taxable valuation of all the property within the school district from which such territory has been detached.

**Source:** Laws 1917, c. 225, § 25, p. 556; C.S.1922, § 6634; C.S.1929, § 79-2625; R.S.1943, § 79-2628; Laws 1949, c. 256, § 220, p. 762; Laws 1979, LB 187, § 235; Laws 1992, LB 719A, § 188; R.S.1943, (1994), § 79-533; Laws 1996, LB 900, § 217; Laws 2006, LB 1024, § 46.

**79-469 City of second class or village; merger with city of primary class; officers of merged school district; duties.**

Upon a consolidation taking effect as provided in section 79-468, the office and tenure of all members of boards of education and other school district officers of the district which is annexed to and merged into the school district of the city of the primary class shall cease. All the officers of any city or village school district thus annexed having any of the funds, records, books, papers, or property of any kind in their hands or under their control shall immediately

deliver the same to such officers of the district to which their district is annexed as are entitled to receive them.

**Source:** Laws 1917, c. 225, § 26, p. 557; C.S.1922, § 6635; C.S.1929, § 79-2626; R.S.1943, § 79-2629; Laws 1949, c. 256, § 221, p. 763; R.S.1943, (1994), § 79-534; Laws 1996, LB 900, § 218; Laws 2006, LB 1024, § 47.

**79-470 Contract for instruction; merger; effect; limitation; dissolution.**

(1) No Class I school district which contracts for the instruction of all of its pupils with a Class I, II, III, IV, or V school district shall merge with another Class I school district unless such other Class I school district with which it is merging is included in the area which makes up a Class VI school district.

(2) No district shall contract for the instruction of all of its pupils with a Class II, III, IV, or V school district for more than two consecutive years.

(3) The State Committee for the Reorganization of School Districts shall dissolve and attach to a neighboring school district or districts any school district which, for two consecutive years, contracts for the instruction of all of its pupils with a Class II, III, IV, or V school district.

(4) The dissolution of any school district pursuant to this section shall be effected in the manner prescribed in section 79-498. When such dissolution would create extreme hardships on the pupils or the school district affected, the State Board of Education may, on application by the school board of the school district, waive the dissolution of the school district on an annual basis.

(5) Nothing in this section shall be construed as an extension of the limitations on contracting for the instruction of the pupils of a school district contained in section 79-598.

**Source:** Laws 1969, c. 703, § 3, p. 2702; Laws 1973, LB 148, § 2; Laws 1987, LB 106, § 1; R.S.1943, (1994), § 79-603; Laws 1996, LB 900, § 219; Laws 1999, LB 272, § 60; Laws 2005, LB 126, § 33; Referendum 2006, No. 422.

County superintendent has mandatory duty to dissolve Class I school district when precedent conditions in this section exist. *In re Dissolution of School Dist. No. 22 of Madison County*, 216 Neb. 89, 341 N.W.2d 918 (1983).

The constitutional prohibition against passage of ex post facto laws applies only to penal or criminal matters. *Lentz v. Saunders*, 199 Neb. 3, 255 N.W.2d 853 (1977).

This is an independent act and its adoption did not violate constitutional requirements. *Bodenstedt v. Rickers*, 189 Neb. 407, 203 N.W.2d 110 (1972).

**79-471 Dissolving district; expenses incurred by school district; charge against district and taxable property therein.**

Any expenses incurred by a school district in opposing an order dissolving it under section 79-470 or 79-598 shall be a charge only against such district and the taxable property therein.

**Source:** Laws 1973, LB 148, § 3; R.S.1943, (1994), § 79-604; Laws 1996, LB 900, § 220.

**79-472 Class II school district; discontinue high school; affiliation; vote; Class I school district; board; election.**

(1)(a) If a Class II school district, by a vote of fifty-five percent of the legal voters voting at a special meeting, decides to discontinue and close the high school, the school district shall become an affiliated Class I school district on

the date designated by such legal voters. Affiliation shall be accomplished pursuant to sections 79-413 to 79-427. At such meeting a decision shall be made as to when the new school board shall be elected and whether the board shall consist of three members or six members. No new Class I school district shall establish a six-member board unless the school district contains a minimum of one hundred fifty children who are five through twenty years of age. The school board of the existing Class II school district shall remain in office until the effective date for the formation of the new Class I school district.

(b) If the new school board is to consist of three members, such members shall be elected at the time of the vote to change from a Class II school district to a Class I school district or at a special meeting held not less than thirty days prior to the effective date of the change from a Class II school district to a Class I school district. At the special meeting, a treasurer shall be elected for a term of one year, a secretary for a term of two years, and a president for a term of three years, and their successors shall be elected for terms of three years each. All officers so elected shall hold their offices until successors are elected and qualified. After such change becomes effective, the school district and its officers shall have the powers of and be governed by the provisions of law applicable to Class I school districts.

(c) If the new school board is to consist of six members, such members shall be elected after the vote to change from a Class II school district to a Class I school district. The procedure for electing board members shall be as prescribed in section 32-541 or as prescribed in subsection (3) of section 79-565, except that such election may be held at any annual school meeting or at a special school meeting called for the purpose of electing school district officers.

(2) No school district may change from Class I to Class II unless that school district has an enrollment of not less than one hundred pupils in grades nine through twelve. This subsection shall not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

**Source:** Laws 1881, c. 78, subdivision VI, § 1, p. 355; Laws 1885, c. 79, § 1, p. 325; Laws 1889, c. 78, § 16, p. 550; R.S.1913, § 6798; Laws 1917, c. 120, § 1, p. 295; Laws 1921, c. 79, § 1, p. 287; C.S.1922, § 6339; C.S.1929, § 79-601; R.S.1943, § 79-601; Laws 1945, c. 204, § 1, p. 615; Laws 1949, c. 256, § 230, p. 766; Laws 1953, c. 302, § 1, p. 1014; Laws 1959, c. 403, § 1, p. 1364; Laws 1969, c. 257, § 41, p. 953; Laws 1972, LB 661, § 84; Laws 1977, LB 430, § 2; Laws 1978, LB 872, § 1; Laws 1984, LB 942, § 2; Laws 1985, LB 662, § 34; Laws 1989, LB 183, § 20; Laws 1990, LB 1037, § 1; Laws 1990, LB 1090, § 15; Laws 1991, LB 511, § 54; Laws 1992, LB 245, § 60; Laws 1994, LB 76, § 599; Laws 1996, LB 604, § 7; R.S.1943, (1994), § 79-701; Laws 1996, LB 900, § 221; Laws 1997, LB 345, § 15; Laws 1999, LB 813, § 7; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

#### Cross References

**Creation of Class II school district from a Class I school district,** see section 79-406.

**For qualifications of school board members,** see section 79-543.

**Vacancies,** see section 79-545.

Officers of Class II district are president, secretary, and treasurer. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

Under former statute, an article 6 school could be organized if it contained more than 150 children between the ages of 5 and

21 years. *Griggs v. School District No. 76 of Wayne County*, 152 Neb. 282, 40 N.W.2d 859 (1950).

Under former act, section had no reference to proceedings to be had at first meeting of newly organized districts and did not prohibit such districts from choosing between two forms of

school government at organization meeting. *State ex rel. Davis v. Clarke*, 108 Neb. 638, 188 N.W. 472 (1922).

Under former law, term of old board expires on second Monday of July following. *State ex rel. Upton v. Weatherby*, 17 Neb. 553, 23 N.W. 512 (1885).

**79-473 Class III school district; annexed school district territory; negotiation; election; question on ballot.**

(1) If the territory annexed by a change of boundaries of a city or village which lies within a Class III school district as provided in section 79-407 has been part of a Class IV or Class V school district prior to such annexation, a merger of the annexed territory with the Class III school district shall become effective only if the merger is approved by a majority of the members of the school board of the Class IV or V school district and a majority of the members of the school board of the Class III school district within ninety days after the effective date of the annexation ordinance, except that a merger shall not become effective pursuant to this section if such merger involves a school district that is a member of a learning community.

(2) Notwithstanding subsection (1) of this section, when territory which lies within a Class III school district, Class VI school district, or Class I school district which is attached to a Class VI school district or which does not lie within a Class IV or V school district is annexed by a city or village pursuant to section 79-407, the affected school board of the city or village school district and the affected school board or boards serving the territory subject to the annexation ordinance shall meet within thirty days after the effective date of the annexation ordinance if neither school district is a member of a learning community and negotiate in good faith as to which school district shall serve the annexed territory and the effective date of any transfer. During the process of negotiation, the affected boards shall consider the following criteria:

- (a) The educational needs of the students in the affected school districts;
- (b) The economic impact upon the affected school districts;
- (c) Any common interests between the annexed or platted area and the affected school districts and the community which has zoning jurisdiction over the area; and
- (d) Community educational planning.

If no agreement has been reached within ninety days after the effective date of the annexation ordinance, the territory shall transfer to the school district of the annexing city or village ten days after the expiration of such ninety-day period unless an affected school district petitions the district court within the ten-day period and obtains an order enjoining the transfer and requiring the boards of the affected school districts to continue negotiation. The court shall issue the order upon a finding that the affected board or boards have not negotiated in good faith based on one or more of the criteria listed in this subsection. The district court shall require no bond or other surety as a condition for any preliminary injunctive relief. If no agreement is reached after such order by the district court and additional negotiations, the annexed territory shall become a part of the school district of the annexing city or village.

(3) If, within the boundaries of the annexed territory, there exists a Class VI school, the school building, facilities, and land owned by the school district shall remain a part of the Class VI school district. If the Class VI school district

from which territory is being annexed wishes to dispose of such school building, facilities, or land to any individual or political subdivision, including a Class I school district, the question of such disposition shall be placed on the ballot for the next primary or general election. All legal voters of such Class VI school district shall then vote on the question at such election. A simple majority of the votes cast shall resolve the issue.

(4) Whenever an application for approval of a final plat or replat is filed for territory which lies within the zoning jurisdiction of a city of the first or second class and does not lie within the boundaries of a Class IV or V school district, the boundaries of a school district that is a member of a learning community, the boundaries of any county in which a city of the metropolitan class is located, or the boundaries of any county that has a contiguous border with a city of the metropolitan class, the affected school board of the school district within the city of the first or second class or its representative and the affected board or boards serving the territory subject to the final plat or replat or their representative shall meet within thirty days after such application and negotiate in good faith as to which school district shall serve the platted or replatted territory and the effective date of any transfer based upon the criteria prescribed in subsection (2) of this section.

If no agreement has been reached prior to the approval of the final plat or replat, the territory shall transfer to the school district of the city of the first or second class upon the filing of the final plat unless an affected school district petitions the district court within ten days after approval of the final plat or replat and obtains an order enjoining the transfer and requiring the affected boards to continue negotiation. The court shall issue the order upon a finding that the affected board or boards have not negotiated in good faith based on one or more of the criteria listed in subsection (2) of this section. The district court shall require no bond or other surety as a condition for any preliminary injunctive relief. If no agreement is reached after such order by the district court and additional negotiations, the platted or replatted territory shall become a part of the school district of the city of the first or second class.

For purposes of this subsection, plat and replat apply only to (a) vacant land, (b) land under cultivation, or (c) any plat or replat of land involving a substantive change in the size or configuration of any lot or lots.

(5) Notwithstanding any other provisions of this section, all negotiated agreements relative to boundaries or to real or personal property of school districts reached by the affected school boards shall be valid and binding, except that such agreements shall not be binding on reorganization plans pursuant to the Learning Community Reorganization Act.

**Source:** Laws 1996, LB 900, § 222; Laws 1997, LB 345, § 16; Laws 2005, LB 126, § 34; Laws 2006, LB 1024, § 48; Referendum 2006, No. 422.

#### Cross References

Learning Community Reorganization Act, see section 79-4,117.

1. Annexation of territory
2. Procedure
3. Miscellaneous

#### 1. Annexation of territory

The proviso of this section distinguishes only between territory annexed to a Class III, IV, V, or VI district by petition, and

territory which was a part of the original district or later became a part of it by means other than by petition. The proviso does not distinguish between different methods of creation of

school districts. State ex rel. Halloran v. Hawes, 203 Neb. 405, 279 N.W.2d 96 (1979).

Apportionment of assets of school districts upon partial or complete merger, division, or annexation decided. School Dist. No. 74 of Hall County v. School Dist. of Grand Island, 186 Neb. 728, 186 N.W.2d 485 (1971).

## 2. Procedure

Annexation by city council resolution in compliance with a subdivision ordinance adopted by the city under section 19-916 constitutes a declaration of boundaries of the city by ordinance within the meaning of former section 79-801. The effective date of the city annexation ordinance is the date of the city council resolution of approval. Northwest High School Dist. No. 82 of Hall and Merrick Counties v. Hessel, 210 Neb. 219, 313 N.W.2d 656 (1981).

An action to enjoin a school district or part thereof, consequent upon annexation of territory by a city of the first class, is barred by the statute of limitations unless brought within one year from effective date of annexation ordinance. School Dist. No. 127 of Lincoln County v. Simpson, 191 Neb. 164, 214 N.W.2d 251 (1974).

## 79-474 School district merged into Class III school district; bonded indebtedness; liability.

Whenever an existing school district or a part thereof is merged into a Class III school district under the provisions of section 79-407 or 79-473, the property included in such school district or part thereof which is merged into the Class III school district shall continue to be liable for any bonded indebtedness incurred by the school district of which it was a part prior to such merger and the property included in such school district or part thereof which is merged into the Class III school district shall not be liable for any bonded indebtedness incurred by the Class III school district prior to such merger.

**Source:** Laws 1965, c. 509, § 1, p. 1628; R.S.1943, (1994), § 79-801.01; Laws 1996, LB 900, § 223.

## 79-475 School district merged into Class III or IV school district; effective; when.

Whenever an existing school district, or a part thereof, is merged into a Class III or IV school district under the provisions of section 79-407, 79-408, or 79-473, such merger shall be effective on July 1 immediately following the effective date of the change of city or village boundaries which caused the merger pursuant to section 79-407, 79-408, or 79-473.

**Source:** Laws 1965, c. 509, § 2, p. 1628; Laws 1994, LB 1310, § 9; R.S.1943, (1994), § 79-801.02; Laws 1996, LB 900, § 224; Laws 2005, LB 198, § 2.

This section is limited to provisions of former section 79-801, and is not applicable to school district boundary changes under other statutes. Corcoran v. Boone County Board of Equalization, 196 Neb. 363, 243 N.W.2d 60 (1976).

An action to enjoin a school district or part thereof, consequent upon annexation of territory by a city of the first class, is barred by the statute of limitations unless brought within one

Effect of annexation upon school district boundaries gave owner of land purportedly annexed standing to contest validity of annexation ordinances. Doolittle v. County of Lincoln, 191 Neb. 159, 214 N.W.2d 248 (1974).

## 3. Miscellaneous

Subsection (4) of this section does not violate either the U.S. Constitution or the Constitution of the State of Nebraska. School Dist. No. 46 of Sarpy County v. City of Bellevue, 224 Neb. 543, 400 N.W.2d 229 (1987).

Former section 79-801.02 is limited to provisions of this section, and is not applicable to school district boundary changes under other statutes. Corcoran v. Boone County Board of Equalization, 196 Neb. 363, 243 N.W.2d 60 (1976).

Merger not even in existence until required approval forthcoming. School Dist. of Bellevue v. Strawn, 185 Neb. 392, 176 N.W.2d 42 (1970).

Plan of government of school district organized under this article is representative in form. State ex rel. Strange v. School District of Nebraska City, 150 Neb. 109, 33 N.W.2d 358 (1948).

year from effective date of annexation ordinance. School Dist. No. 127 of Lincoln County v. Simpson, 191 Neb. 164, 214 N.W.2d 251 (1974).

Merger takes place on the date specified in this section. School Dist. of Bellevue v. Strawn, 185 Neb. 392, 176 N.W.2d 42 (1970).

## 79-476 Class V school district; property subject to school tax; management of affairs of district.

All property within the corporate limits of cities of the metropolitan class, except such property as now is or may hereafter be exempt by law, shall be subject to taxation for all school purposes. The affairs of the school district

created by Chapter 79 shall be conducted exclusively by the board of education except as otherwise provided by Chapter 79.

**Source:** Laws 1891, c. 45, § 3, p. 318; R.S.1913, § 7009; C.S.1922, § 6640; C.S.1929, § 79-2703; R.S.1943, § 79-2703; Laws 1949, c. 256, § 250, p. 775; Laws 1951, c. 276, § 11, p. 933; Laws 1959, c. 406, § 1, p. 1368; R.S.1943, (1994), § 79-1002; Laws 1996, LB 900, § 225; Laws 2006, LB 1024, § 49.

Annexation of territory adjacent to metropolitan city did not ipso facto make territory annexed a part of the school district of city. *Ratigan v. Davis*, 175 Neb. 416, 122 N.W.2d 12 (1963).

**79-477 Class VI school district; discontinuance of district; vote required; notice.**

A Class VI school district may be discontinued at any annual or special meeting of the district by a vote of fifty-five percent of the legal voters voting at such meeting if notice of such contemplated action is duly given in the notice or call for the meeting.

**Source:** Laws 1949, c. 256, § 300, p. 792; R.S.1943, (1994), § 79-1106; Laws 1996, LB 900, § 226; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**79-478 Class VI school district; disapproval by State Board of Education; Class I school district; withdrawal; vote required.**

If the high school in a Class VI school district is disapproved by the State Board of Education and the legal voters fail to vote to discontinue the high school in that district, the legal voters of any Class I district in the Class VI school district may vote at an annual or special meeting to withdraw from the Class VI school district and if fifty-five percent of the legal voters of such Class I district vote to withdraw from the Class VI school district, the State Committee for the Reorganization of School Districts shall order the Class I district withdrawn from the Class VI school district.

**Source:** Laws 1961, c. 404, § 1, p. 1221; Laws 1985, LB 662, § 35; R.S.1943, (1994), § 79-1107; Laws 1996, LB 900, § 227; Laws 1999, LB 272, § 61; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

This section provides for the withdrawal of a Class I school district from a rural high school district in which the high school has been disapproved. *Pribil v. French*, 179 Neb. 602, 139 N.W.2d 356 (1966).

(h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS

**79-479 Change of boundaries; order; conditions; transfer of assets and liabilities.**

(1)(a) Beginning January 1, 1992, any school district boundaries changed by the means provided by Nebraska law, but excluding the method provided by sections 79-407 and 79-473 to 79-475, shall be made only upon an order issued by the State Committee for the Reorganization of School Districts or county clerk. The state committee shall not issue an order changing boundaries relating to affiliation of school districts if twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed unless (i) one or

more resident students of the tract of land under common ownership has attended the high school program of the high school district within the immediately preceding ten-year period or (ii) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(b) The order issued by the state committee shall be certified to the county clerk of each county in which boundaries are changed and shall also be certified to the State Department of Education. Whenever the order changes the boundaries of a school district due to the transfer of land, the county assessor, the Property Tax Administrator, and the State Department of Education shall be provided with the legal description and a map of the parcel of land which is transferred. Such order shall be issued no later than June 1 and shall have an effective date no later than August 1 of the same year. For purposes of determining school district counts pursuant to sections 79-524 and 79-578 and calculating state aid allocations pursuant to the Tax Equity and Educational Opportunities Support Act, any change in school district boundaries with an effective date between June 1 and August 1 of any year shall be considered effective July 1 of such year.

(2) Unless otherwise provided by state law or by the terms of an affiliation or reorganization plan or petition which is consistent with state law, all assets, including budget authority as provided in sections 79-1023 to 79-1030, and liabilities, except bonded obligations, of school districts merged, dissolved, or annexed shall be transferred to the receiving district or districts on the basis of the proportionate share of assessed valuation received at the time of reorganization. When a Class II, III, IV, or V school district becomes a Class I school district:

(a) Which becomes part of a Class VI district which offers instruction in grades six through twelve, 37.9310 percent of the Class II, III, IV, or V district's assets and liabilities shall be transferred to the new Class I district and the remainder shall be transferred to the Class VI district or districts of which the Class I district becomes a part on the basis of the proportionate share of assessed valuation each high school district received at the time of such change in class of district;

(b) Which becomes part of a Class VI district which offers instruction in grades seven through twelve, 44.8276 percent of the Class II, III, IV, or V district's assets and liabilities shall be transferred to the new Class I district and the remainder shall be transferred to the Class VI district or districts of which the Class I district becomes a part on the basis of the proportionate share of assessed valuation each high school district received at the time of such change in class of district; or

(c) Which is affiliated or becomes part of a Class VI district which offers instruction in grades nine through twelve, 61.3793 percent of the Class II, III, IV, or V school district's assets and liabilities shall be transferred to the new Class I district and the remainder shall be transferred to the Class VI district or districts of which the Class I district becomes a part and to the high school district or districts with which the Class I district is affiliated on the basis of the proportionate share of assessed valuation each high school district received at the time of such change in class of district.

**Source:** Laws 1996, LB 604, § 3; Laws 1996, LB 900, § 228; Laws 1997, LB 347, § 13; Laws 1997, LB 806, § 23; Laws 1999, LB 272,

§ 62; Laws 1999, LB 813, § 8; Laws 2003, LB 394, § 5; Laws 2005, LB 126, § 35; Laws 2006, LB 1024, § 50; Referendum 2006, No. 422.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-480 Districts; changes in boundaries; filing of petition; evidence.**

The county clerk shall file in his or her office all petitions that have been granted for change of boundaries or for the formation of new districts. Such petitions so filed and granted shall be prima facie evidence of the boundaries of districts. All conflicting records of boundaries shall be made to correspond with the petitions so filed and granted.

**Source:** Laws 1885, c. 79, § 1, p. 319; Laws 1889, c. 78, § 1, p. 539; Laws 1895, c. 58, § 1, p. 221; Laws 1901, c. 59, § 1, p. 429; Laws 1909, c. 117, § 1, p. 451; R.S.1913, § 6703; C.S.1922, § 6241; Laws 1923, c. 63, § 1, p. 190; Laws 1925, c. 177, § 1, p. 461; C.S.1929, § 79-104; Laws 1931, c. 145, § 1, p. 396; C.S.Supp.,1941, § 79-104; Laws 1943, c. 197, § 1(8), p. 664; R.S.1943, § 79-117; Laws 1949, c. 256, § 48, p. 709; R.S.1943, (1994), § 79-409; Laws 1996, LB 900, § 229; Laws 1999, LB 272, § 63.

**79-481 Repealed. Laws 1999, LB 272, § 118.**

**79-482 Repealed. Laws 1999, LB 272, § 118.**

**79-483 Repealed. Laws 1999, LB 272, § 118.**

**79-484 Repealed. Laws 1999, LB 272, § 118.**

**79-485 New districts; formation from dissolved district possessing property; property and indebtedness; how apportioned.**

When a new district is formed in whole or in part from one or more districts possessing a schoolhouse or other property of a dissolved district, the State Committee for the Reorganization of School Districts, at the time of forming such new district or as soon thereafter as possible, shall determine the amount justly due to such new district from any dissolved district or districts out of which the new district was in whole or in part formed. The amount shall be determined as nearly as practicable according to the relative value of the taxable property in the respective parts of such former district or districts with the whole value thereof at the time of such division. The fact that the schoolhouse or other property is not paid for shall not deprive such new district of its proportionate share of the value thereof. Such new district shall remain bound for such indebtedness to the same extent as though the new district had not been formed, unless in case of indebtedness not bonded, it shall be adjusted as provided in section 79-489. When a new district embraces all of one or more former districts, the new district shall succeed to all the properties and other assets and be responsible for all unbonded indebtedness of such former dissolved district or districts.

**Source:** Laws 1881, c. 78, subdivision I, § 9, p. 334; R.S.1913, § 6708; C.S.1922, § 6246; C.S.1929, § 79-109; R.S.1943, § 79-122; Laws

1949, c. 256, § 53, p. 710; Laws 1963, c. 477, § 1, p. 1533; R.S.1943, (1994), § 79-414; Laws 1996, LB 900, § 234; Laws 1999, LB 272, § 64.

When a school district succeeds to all property and assets of former dissolved districts it is liable for breaches of teachers' contracts by former districts if former districts would have been liable. *Knapp v. School Dist. No. 109R of Red Willow and Frontier Counties*, 190 Neb. 237, 207 N.W.2d 223 (1973).

Apportionment of assets of school districts upon partial or complete merger, division, or annexation decided. *School Dist. No. 74 of Hall County v. School Dist. of Grand Island*, 186 Neb. 728, 186 N.W.2d 485 (1971).

After creation of new rural high school district from county high school district, county superintendent is required to determine amount due new district. *State ex rel. Venango Rural High School Dist. v. Ziegler*, 173 Neb. 758, 115 N.W.2d 142 (1962).

Lapse of time, unless it works an estoppel, will not prevent new district from asserting right to division of property. *School*

*Dist. No. 46 of Douglas County v. School Dist. No. 53 of Douglas County*, 49 Neb. 33, 68 N.W. 366 (1896).

Superintendent must apportion property before new district can maintain action. *School Dist. No. 17 of Kearney County v. School Dist. No. 2 of Kearney County*, 17 Neb. 177, 22 N.W. 360 (1885).

Where division is made after levy of taxes, new district may recover its share. *School Dist. No. 6 of Hamilton County v. School Dist. No. 9 of Hamilton County*, 13 Neb. 166, 12 N.W. 921 (1882).

Where division is made before levy, levy cannot be made on new district. *School Dist. No. 9 of Hamilton County v. School Dist. No. 6 of Hamilton County*, 9 Neb. 331, 2 N.W. 712 (1879).

Parent district cannot use funds setoff to new district. *State ex rel. McMillan v. Hodge*, 4 Neb. 265 (1876).

### **79-486 New districts; proceeds of sale and funds of old district; how apportioned.**

All money on hand and arising from the sale of schoolhouse and site and all other funds of the divided districts described in section 79-485 shall be divided among the several districts created in whole or part from the divided districts as nearly as practicable in proportion to the taxable valuation of the taxable property attached to the districts formed in whole or in part by such division.

**Source:** Laws 1881, c. 78, subdivision I, § 14, p. 335; R.S.1913, § 6713; C.S.1922, § 6251; C.S.1929, § 79-114; R.S.1943, § 79-127; Laws 1949, c. 256, § 54, p. 711; Laws 1979, LB 187, § 223; Laws 1992, LB 719A, § 180; R.S.1943, (1994), § 79-415; Laws 1996, LB 900, § 235.

Apportionment of assets of school districts upon partial or complete merger, division, or annexation decided. *School Dist.*

*No. 74 of Hall County v. School Dist. of Grand Island*, 186 Neb. 728, 186 N.W.2d 485 (1971).

### **79-487 Districts; division; part taken over by United States; sale of schoolhouse.**

Whenever, due to the division of any district or due to a district or any part thereof being taken over by the United States for any defense, flood control, irrigation, or war project, the schoolhouse, schoolhouse site, or other property of such district is no longer conveniently located for school purposes or desired to be retained by the district in which it is situated, the county sheriff of the county in which such schoolhouse, schoolhouse site, or other property is located may, when ordered by the district, advertise and sell the same at public or private sale and apportion the proceeds. When sold at private sale, the sale shall not be binding until approved by the district interested.

**Source:** Laws 1881, c. 78, subdivision I, § 13, p. 335; R.S.1913, § 6712; C.S.1922, § 6250; C.S.1929, § 79-113; Laws 1943, c. 197, § 2, p. 664; R.S.1943, § 79-126; Laws 1949, c. 256, § 55, p. 711; R.S. 1943, (1994), § 79-416; Laws 1996, LB 900, § 236; Laws 1999, LB 272, § 65.

Apportionment of assets of school districts upon partial or complete merger, division, or annexation decided. *School Dist.*

*No. 74 of Hall County v. School Dist. of Grand Island*, 186 Neb. 728, 186 N.W.2d 485 (1971).

### **79-488 Districts; reduction in size through acquisition of land by United States; attachment of remainder; apportionment of funds.**

When a district is reduced in size by the purchase or appropriation of land by the United States for any defense, flood control, irrigation, or war project, the district to which such remaining part is attached shall receive a pro rata share of all funds based upon the ratio of taxable valuation of the remaining part to the total taxable valuation of the former district as determined at the last current valuation.

**Source:** Laws 1943, c. 197, § 4, p. 665; R.S.1943, § 79-128.01; Laws 1949, c. 256, § 56, p. 711; Laws 1979, LB 187, § 224; Laws 1992, LB 719A, § 181; R.S.1943, (1994), § 79-417; Laws 1996, LB 900, § 237.

**79-489 New districts; formation from old districts; general indebtedness; duty to consider in dividing property.**

Subject to the provisions of section 79-485, whenever a new district is organized from the territory of a former district and there is any indebtedness of such former district which is not bonded, such unbonded indebtedness shall be taken into account in estimating the sum due from the old district to the new district on account of schoolhouse or other property and the new district shall be entitled to only the value of its proportionate share of such property after deducting its like share of the indebtedness.

**Source:** Laws 1881, c. 78, subdivision I, § 16, p. 336; R.S.1913, § 6715; C.S.1922, § 6253; C.S.1929, § 79-116; R.S.1943, § 79-129; Laws 1949, c. 256, § 57, p. 711; R.S.1943, (1994), § 79-418; Laws 1996, LB 900, § 238.

**79-490 Districts; change in boundary lines; map; report; adjustments in tax list.**

Every change in district boundary lines shall be reported as soon as made by the State Committee for the Reorganization of School Districts to the county clerk, county assessor, and county treasurer. The county clerk shall keep in his or her office a map of the school districts of the county, which map shall be revised as often as the boundary lines or districts are changed or new districts formed. Upon receiving such report from the state committee, the county treasurer shall adjust the tax list of the county in accordance with the change of district boundaries so that the uncollected taxes levied upon property that has been transferred to another school district shall when collected be placed to the credit of the district to which the property has been transferred.

**Source:** Laws 1881, c. 78, subdivision I, § 17, p. 336; Laws 1885, c. 79, § 1, p. 321; R.S.1913, § 6716; C.S.1922, § 6254; C.S.1929, § 79-117; R.S.1943, § 79-130; Laws 1949, c. 256, § 58, p. 712; R.S.1943, (1994), § 79-419; Laws 1996, LB 900, § 239; Laws 1999, LB 272, § 66.

**79-491 Districts; presumption of organization.**

Every school district shall in all cases be presumed to have been legally organized when it has exercised the franchises and privileges of a district for the term of one year.

**Source:** Laws 1881, c. 78, subdivision III, § 8, p. 344; R.S.1913, § 6759; C.S.1922, § 6300; C.S.1929, § 79-308; R.S.1943, § 79-308; Laws 1949, c. 256, § 65, p. 714; R.S.1943, (1994), § 79-426; Laws 1996, LB 900, § 240.

The one-year period provided in this section does not apply during time the validity of organization is in litigation. *Reid v. Slepicka*, 182 Neb. 485, 155 N.W.2d 799 (1968).

After a school district has exercised the franchises and privileges of a district of a certain class for the period of one year, its legal organization will be conclusively presumed. *Griggs v. School District No. 76 of Wayne County*, 152 Neb. 282, 40 N.W.2d 859 (1950).

Presumption of regular organization does not extend to territorial boundaries of a school district. *Majerus v. School District No. 52 of Richardson County*, 139 Neb. 823, 299 N.W. 178 (1941).

After one year of operation, legal organization will be conclusively presumed, whatever may have been defects and irregularities in formation or organization of such district. *State ex rel. School Dist. No. 67 of Kearney County v. School District No. 2 of Kearney County*, 116 Neb. 202, 216 N.W. 663 (1927).

After operation of district for one year, legal organization is presumed. *Kockrow v. Whisenand*, 88 Neb. 640, 130 N.W. 287 (1911).

Presumption of regularity of organization of school district does not preclude contention that tract of land is not within district for tax purposes. *Chicago, B. & O. R.R. Co. v. Cass County*, 51 Neb. 369, 70 N.W. 955 (1897).

Operation for more than one year cures more than mere irregularities. *State ex rel. School Dist. No. 1 of Sioux County v. School Dist. No. 19 of Sioux County*, 42 Neb. 499, 60 N.W. 912 (1894).

Irregularities in organization are no defense against mandamus to compel payment of bonds. *State ex rel. Hopper v. School Dist. No. 13 of Webster County*, 13 Neb. 466, 14 N.W. 382 (1882); *State ex rel. Gregory v. School Dist. No. 24 of Adams County*, 13 Neb. 78, 12 N.W. 927 (1882).

**79-492 Class I school district; organization of new district; first officers; term.**

When a new Class I school district is organized and officers are elected at any other time than at the annual meeting, the time intervening between the date of organization and the beginning of the next school year shall constitute the first year in the term of such officers.

**Source:** Laws 1881, c. 78, subdivision III, § 2, p. 343; Laws 1885, c. 79, § 1, p. 322; R.S.1913, § 6753; C.S.1922, § 6294; C.S.1929, § 79-302; R.S.1943, § 79-302; Laws 1949, c. 256, § 193, p. 754; R.S.1943, (1994), § 79-509; Laws 1996, LB 900, § 241; Laws 1999, LB 813, § 9; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

First year of respective terms includes period of time elapsing from date of organization meeting and election of trustees up to time of holding of first annual meeting. *State ex rel. Davis v. Clarke*, 108 Neb. 638, 188 N.W. 472 (1922).

**79-493 Class I or Class II school district; new district officers; acceptance of office.**

Within ten days after their election, the officers of a new Class I or Class II school district as referred to in section 79-492 shall file with the secretary a written acceptance of the offices to which they have been elected, which acceptance shall be recorded by the secretary. The office of any such officer who fails to file such acceptance within the time specified in this section shall become vacant at the expiration of such period and shall be filled by the remaining members of the board.

**Source:** Laws 1881, c. 78, subdivision III, § 3, p. 343; R.S.1913, § 6754; C.S.1922, § 6295; C.S.1929, § 79-303; R.S.1943, § 79-303; Laws 1949, c. 256, § 194, p. 754; R.S.1943, (1994), § 79-510; Laws 1996, LB 900, § 242; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Under former law, failure of moderator to file acceptance did not forfeit title to office if he had performed duties for one year without objection. *Frans v. Young*, 30 Neb. 360, 46 N.W. 528 (1890).

**79-494 Class I or Class II school district; new school district; when deemed organized.**

Every new Class I or Class II school district described in section 79-492 shall be deemed duly organized when the majority of the officers elected at the first meeting have filed their acceptance as provided in section 79-493. A reorga-

nized school district shall be formed, organized, and have a governing board not later than April 1 following the last legal action, as prescribed in section 79-413, 79-450, or 79-455, necessary to effect the changes in boundaries as set forth in the petition or plan of reorganization, although the physical reorganization of such reorganized school district may not take effect until the commencement of the following school year.

**Source:** Laws 1881, c. 78, subdivision III, § 4, p. 343; R.S.1913, § 6755; C.S.1922, § 6296; C.S.1929, § 79-304; R.S.1943, § 79-304; Laws 1949, c. 256, § 195, p. 755; Laws 1951, c. 276, § 8, p. 931; Laws 1988, LB 520, § 3; R.S.1943, (1994), § 79-511; Laws 1996, LB 900, § 243; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**79-495 Class I or Class II school district; new district; failure to organize; dissolution for failure to organize.**

In case the inhabitants of any new Class I or Class II school district referred to in section 79-492 fail to organize it, the State Committee for the Reorganization of School Districts shall immediately dissolve such district and attach it to an adjoining district or districts.

**Source:** Laws 1881, c. 78, subdivision III, § 5, p. 344; R.S.1913, § 6756; C.S.1922, § 6297; C.S.1929, § 79-305; R.S.1943, § 79-305; Laws 1949, c. 256, § 196, p. 755; R.S.1943, (1994), § 79-512; Laws 1996, LB 900, § 244; Laws 1999, LB 272, § 67; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

**79-496 Class IV or Class V school district; obligations of merged districts; assumption.**

Each school district created by merger with other districts shall provide for the payment of debts created by school districts, or other school organizations, superseded by the merged district, when such debts have been incurred in the erection of schoolhouses or for other school purposes. If any portion of such debt is in the form of bonds, if issued for a valuable consideration, the holder or holders thereof, upon surrendering the same to the school board or board of education, shall have the right to demand, and the board in the name of the merged district shall cause to be issued, other bonds of like amount and of like tenor and effect as to payment of principal and interest as the bonds surrendered. This provision shall also apply to cases when only a part of a district is embraced within the merged district whenever the fractional part becomes a part of the merged district. The merged district shall assume and pay only such proportion of debt of divided districts as the taxable valuation of the part taken bears to the taxable valuation of the whole district. This section applies to Class IV and V districts only.

**Source:** Laws 1891, c. 45, § 20, p. 324; R.S.1913, § 7026; C.S.1922, § 6657; C.S.1929, § 79-2720; R.S.1943, § 79-2720; Laws 1949, c. 256, § 223, p. 764; Laws 1979, LB 187, § 236; Laws 1992, LB 719A, § 189; R.S.1943, (1994), § 79-536; Laws 1996, LB 900, § 245.

**79-497 Division of districts within city of primary or metropolitan class; assets and liabilities; adjustment.**

In case of a division of one or more school districts within the corporate limits of a city of the primary or metropolitan class, the president of the school board and the secretary of the school districts shall appraise and adjust all claims or assets in such manner that each district shall bear its proportion of the indebtedness and have its proportion of the assets of the district.

**Source:** Laws 1891, c. 45, § 20, p. 324; R.S.1913, § 7026; C.S.1922, § 6657; C.S.1929, § 79-2720; R.S.1943, § 79-2721; Laws 1949, c. 256, § 224, p. 764; R.S.1943, (1994), § 79-537; Laws 1996, LB 900, § 246; Laws 1999, LB 272, § 68.

#### (i) DEPOPULATED DISTRICTS

#### **79-498 Depopulated districts; attachment to adjoining districts; notice; when authorized; waiver of requirements; findings; appeal; distribution of assets.**

When, for a period of one school term, a school district (1) has less than three legal voters residing in the district or (2)(a) fails to maintain a public elementary school within the district in which are enrolled and in regular attendance for at least one thousand thirty-two hours one or more pupils of school age residing in the district, other than option students as defined in section 79-233, or (b) does not contract for the tuition and transportation of pupils of such district with another district or districts and have pupils attending school regularly for at least one thousand thirty-two hours under such contract or contracts, the State Committee for the Reorganization of School Districts shall, subject to the requirements of this section, dissolve such district and attach the territory of such district to one or more neighboring school districts. Before dissolving a district under this section, the state committee shall fix a time for a hearing and shall notify each legal resident of the district at least fifteen days before such hearing. When the dissolution will create extreme hardships on the pupils of the district affected, the State Board of Education may, on application by the school board of the district, annually waive the requirements of this section. Notification shall be by mail or by publication in a newspaper of general circulation in the area.

If the state committee finds that the district is required by this section to be dissolved, it shall enter an order dissolving the district and directing the county clerk of the county in which such district is located to attach the territory of such district to one or more neighboring school districts. Appeals from the action of the state committee may be made to the district court of the county in which the depopulated district is located. The county treasurer shall distribute the assets of the closed district among the other district or districts to which the property has been attached in proportion to the taxable valuation of the property attached to such district or districts.

**Source:** Laws 1897, c. 62, § 2, p. 308; Laws 1909, c. 117, § 2, p. 455; R.S.1913, § 6723; C.S.1922, § 6261; C.S.1929, § 79-124; R.S. 1943, § 79-137; Laws 1949, c. 256, § 59, p. 712; Laws 1953, c. 291, § 2, p. 989; Laws 1955, c. 308, § 1, p. 952; Laws 1955, c. 315, § 5, p. 975; Laws 1959, c. 386, § 1, p. 1336; Laws 1963, c. 478, § 1, p. 1534; Laws 1971, LB 211, § 2; Laws 1979, LB 187, § 225; Laws 1985, LB 633, § 1; Laws 1989, LB 183, § 19; Laws 1992, LB 719A, § 182; R.S.1943, (1994), § 79-420; Laws 1996, LB 900, § 247; Laws 1999, LB 272, § 69.

1. County superintendent's duties
2. Procedure
3. Miscellaneous

#### 1. County superintendent's duties

County superintendent has mandatory duty to dissolve Class I school district when precedent conditions in this section exist. In re Dissolution of School Dist. No. 22 of Madison County, 216 Neb. 89, 341 N.W.2d 918 (1983).

Statute contemplates that the county superintendent inform himself of the facts before fixing a time for the required public hearing. School Dist. No. 39 of Sarpy County v. Farber, 215 Neb. 791, 341 N.W.2d 320 (1983).

Where conditions precedent enumerated in this section exist, it is mandatory duty of county superintendent to take action unless valid waiver given. Chappell v. Carr, 185 Neb. 158, 174 N.W.2d 208 (1970).

Powers and duties imposed on county superintendent of schools are legislative in character. McDonald v. Rentfrow, 171 Neb. 479, 106 N.W.2d 682 (1960).

County superintendent has duty of attaching territory of district failing to maintain public school for two consecutive years to adjoining districts. State ex rel. Higgs v. Summers, 118 Neb. 189, 223 N.W. 957 (1929).

#### 2. Procedure

Action to dissolve district involving transfer of territory across county lines requires the joint action of both county superintendents involved. Lentz v. Saunders, 199 Neb. 3, 255 N.W.2d 853 (1977).

Notice was properly given of intention to dissolve district. Board of Education v. Winne, 177 Neb. 431, 129 N.W.2d 255 (1964).

#### 3. Miscellaneous

Litigant who invokes statute to appeal county superintendent's decision to merge may not question its constitutionality in same action. In re Dissolution of School Dist. No. 22 of Madison County, 216 Neb. 89, 341 N.W.2d 918 (1983).

Subject to possible waiver when this section has been invoked, statutory plans for voluntary dissolution cease to be available. Nelson v. Robertson, 187 Neb. 192, 188 N.W.2d 720 (1971).

Amendment to prior act held unconstitutional for failure to provide for notice and an opportunity to be heard. Schutte v. Schmitt, 162 Neb. 162, 75 N.W.2d 656 (1956).

### **79-499 Class II or Class III school district; membership requirements; cooperative programs; when required; plan; contract for services; effect.**

(1) Commencing with the 1992-93 school year, if the fall school district membership or the average daily membership of an existing Class II or III school district shows less than thirty-five students in grades nine through twelve, the district shall submit a plan for developing cooperative programs with other high schools, including the sharing of curriculum and certificated and noncertificated staff, to the State Committee for the Reorganization of School Districts. The cooperative program plan shall be submitted by the school district by September 1 of the year following such fall school district membership or average daily membership report. A cooperative program plan shall not be required if there is no high school within fifteen miles from such district on a reasonably improved highway. The state committee shall review the plan and provide advice and communication to such school district and other high schools.

(2) If for two consecutive years the fall school district membership, or for two consecutive years the average daily membership, of an existing Class II or III school district is less than twenty-five pupils in grades nine through twelve or if for one year an existing Class II or III school district contracts with a neighboring school district or districts to provide educational services for all of its pupils in grades nine through twelve, such school district shall, except as provided in subsection (3) of this section, become a Class I school district through the order of the state committee if the high school is within fifteen miles on a reasonably improved highway of another high school.

This subsection does not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(3) Any Class II or III school district maintaining a four-year high school which has a fall school district membership or an average daily membership of less than twenty-five students in grades nine through twelve may contract with another school district to provide educational services for its pupils in grades nine through twelve. Such contract may continue for a period not to exceed one year. At the end of such one-year period, the school district may resume

educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students. If the school district has not achieved such fall school district membership or average daily membership, it shall become a Class I school district by order of the state committee entered after thirty days' notice to the district but without a hearing, notwithstanding the distance on a reasonably improved highway to the nearest school district conducting a high school.

(4) For purposes of this section, when calculating fall school district membership or average daily membership, a resident school district as defined in section 79-233 shall not count students attending an option district as defined in such section and a Class II or III school district shall not count foreign exchange students and nonresident students who are wards of the court or state.

**Source:** Laws 1991, LB 511, § 55; Laws 1992, LB 245, § 53; R.S.1943, (1994), § 79-516.08; Laws 1996, LB 900, § 248; Laws 1996, LB 1050, § 6; Laws 1999, LB 272, § 70; Laws 2005, LB 126, § 36; Referendum 2006, No. 422.

#### Cross References

**Contracting for instruction**, general provisions, see section 79-598.

A school district conversion under subsection (3) of this section (formerly section 79-516.08) is subject to the condition in subsection (2) of this section (formerly section (2)(a) of section 79-516.08) thereof that there be in existence another high school

within 15 miles on a reasonably improved highway. State ex rel. Perkins Cty. Sch. Dist. 65 v. County Superintendent, 247 Neb. 573, 528 N.W.2d 340 (1995).

### (j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS

#### 79-4,100 Terms, defined.

For purposes of statutes governing schools:

(1) Affiliated school system means the high school district and the Class I districts or portions of Class I districts affiliated with such high school district;

(2) Affiliation or affiliation of school districts means an ongoing association of a Class I district or portion thereof not a part of a Class VI district with one or more existing Class II, III, IV, or V districts for the purpose of (a) providing a high school program serving the Class I district students and (b) maintaining tax support to finance such program. The services provided may include student transportation; and

(3) Class VI school system means a Class VI school district and each Class I school district or portion thereof which is part of the Class VI district.

**Source:** Laws 1990, LB 259, § 2; Laws 1991, LB 511, § 8; Laws 1992, LB 245, § 13; Laws 1992, LB 1001, § 11; Laws 1993, LB 348, § 6; Laws 1993, LB 839, § 1; Laws 1994, LB 858, § 1; Laws 1994, LB 1310, § 2; R.S.1943, (1994), § 79-101.01; Laws 1996, LB 900, § 249.

An accepted affiliation petition is not a contract; rather, it creates a new school system. State ex rel. Fick v. Miller, 255 Neb. 387, 584 N.W.2d 809 (1998).

#### 79-4,101 Additional terms, defined.

For purposes of sections 10-716.01, 79-402, 79-422, 79-424 to 79-431, 79-449, 79-4,100 to 79-4,102, 79-611, and 79-1077:

(1) Elementary school facility means the educational facility used to provide services for students in grades kindergarten through eight in an affiliated school system;

(2) High school district means the Class II, III, IV, or V district which provides the high school program for an affiliated Class I district;

(3) High school facility means the educational facility used to provide services for students in grades nine through twelve in an affiliated school system;

(4) High school program means the educational services provided in an affiliated school system for grades nine through twelve; and

(5) High school students means students enrolled in a high school program.

**Source:** Laws 1990, LB 259, § 3; Laws 1991, LB 511, § 9; Laws 1992, LB 245, § 14; Laws 1994, LB 858, § 2; R.S.1943, (1994), § 79-101.02; Laws 1996, LB 900, § 250; Laws 2001, LB 797, § 11; Laws 2005, LB 126, § 37; Referendum 2006, No. 422.

**79-4,102 Affiliated district; student; treatment.**

(1) For purposes of eligibility for or entitlement to any educational service or program, any student residing in an affiliated Class I district who is enrolled in the high school program of an affiliated school system shall be considered to be a resident of the Class II, III, IV, or V district which is part of such affiliated school system. Such student shall be treated for purposes of any educational service, including special education services, extracurricular programs, and other school-sponsored activities, as if he or she were a resident student of the high school district.

(2) All children residing in a Class I district or portion thereof which is affiliated who are fourteen through eighteen years of age shall be counted on the school census of the affiliated high school district pursuant to section 79-528.

**Source:** Laws 1990, LB 259, § 21; Laws 1991, LB 511, § 46; Laws 1992, LB 245, § 51; R.S.1943, (1994), § 79-4,222; Laws 1996, LB 900, § 251; Laws 2003, LB 67, § 4.

The phrase "educational service or program" in subsection (1) of this section does not include transportation. State ex rel. Fick v. Miller, 255 Neb. 387, 584 N.W.2d 809 (1998).

**79-4,103 Advisory committees; created; members; terms; duties.**

An advisory committee shall be created for each affiliated high school district. The advisory committee shall be composed of three school board members selected by all the school board members of the Class I school districts with which such Class II, III, IV, or V district is affiliated. The superintendent of the affiliated high school district shall call a meeting of all the school board members of such Class I school districts, not a part of a Class VI school district, for the purpose of establishing such advisory committees. Representatives shall serve three-year terms.

The advisory committee shall provide advice and communication to the school board of such affiliated high school district regarding the high school program, facilities, and budget and the needs and concerns of students, parents, and taxpayers in the Class I school district or districts. Each advisory commit-

tee shall meet at least biannually with the school board and participate in good faith in those coordination requirements specified in section 79-716.

**Source:** Laws 1988, LB 940, § 5; Laws 1989, LB 190, § 2; Laws 1990, LB 259, § 29; Laws 1991, LB 511, § 43; Laws 1992, LB 245, § 48; Laws 1994, LB 858, § 7; R.S.1943, (1994), § 79-4,105.01; Laws 1996, LB 900, § 252; Laws 1999, LB 272, § 71.

**79-4,104 Statutes on affiliation; held unconstitutional; effect.**

If the provisions of sections 10-716.01, 79-101.01, 79-101.02, 79-402.13 to 79-402.20, 79-426.28, 79-437.03, 79-438.08, 79-438.12, and 79-4,222, as amended by Laws 1991, LB 511, and Laws 1992, LB 245, sections 79-402.11, 79-426.01, 79-426.08, 79-426.17, 79-490, and 79-4,140.16, as amended by Laws 1990, LB 259, and sections 79-402, 79-402.03, 79-402.04, 79-426.02, 79-4,105.01, and 79-4,158.01, as amended by Laws 1990, LB 259, Laws 1991, LB 511, and Laws 1992, LB 245, as such sections existed immediately before July 19, 1996, are found to be unconstitutional pursuant to the final determination of the Nebraska Supreme Court on or after July 1, 1993, the provisions of sections 79-436, 79-437, 79-495 to 79-499, and 79-4,101 to 79-4,105 shall be revived as such sections existed on July 10, 1990.

**Source:** Laws 1990, LB 259, § 33; Laws 1991, LB 511, § 47; Laws 1992, LB 245, § 52; Laws 1994, LB 858, § 9; R.S.1943, (1994), § 79-4,224; Laws 1996, LB 900, § 253.

**Note:** All section numbers cited in this section are section numbers assigned prior to the recodification of Chapter 79 in 1996. For the provisions referred to in this section, consult Volume 5, Reissue of 1994, the Revised Statutes Supplement, 1995, and prior volumes.

(k) REORGANIZATION STUDIES

**79-4,105 Repealed. Laws 2003, LB 67, § 34.**

**79-4,106 Repealed. Laws 2003, LB 67, § 34.**

**79-4,107 Repealed. Laws 2001, LB 313, § 5.**

(l) UNIFIED SYSTEM

**79-4,108 Unified system; interlocal agreement; contents; application; procedure; effect.**

(1) Unified system means two or more Class II or III school districts participating in an interlocal agreement under the Interlocal Cooperation Act with approval from the State Committee for the Reorganization of School Districts. The interlocal agreement may include Class I districts if the entire valuation is included in the unified system. The interlocal agreement shall provide:

(a) For a minimum term of three school years;

(b) That all property tax and state aid resources shall be shared by the unified system;

(c) That a board composed of school board members, with at least one school board member from each district, shall determine the general fund levy, within the limitations placed on school districts and multiple-district school systems pursuant to section 77-3442, to be applied in all participating districts and shall

determine the distribution of property tax and state aid resources within the unified system. For purposes of section 77-3442, the multiple-district school system shall include all of the Class I, II, and III districts participating in the unified system and the Class I districts or portions thereof affiliated with any of the participating Class II and III districts;

(d) That certificated staff will be employees of the unified system. For any certificated staff employed by the unified system, tenure and seniority as of the effective date of the interlocal agreement shall be transferred to the unified system and tenure and seniority provisions shall continue in the unified system except as provided in sections 79-850 to 79-858. If a district withdraws from the unified system or if the interlocal agreement expires and is not renewed, certificated staff employed by a participating district immediately prior to the unification shall be reemployed by the original district and tenure and seniority as of the effective date of the withdrawal or expiration shall be transferred to the original district. The certificated staff hired by the unified system but not employed by a participating district immediately prior to the unification shall be subject to the reduction-in-force policy of the unified system;

(e) That the participating districts shall pay obligations of the unified system pursuant to sections 79-850 to 79-858 on a pro rata basis based on the adjusted valuations if a district withdraws from the unified system or if the interlocal agreement expires and is not renewed; and

(f) The permissible method or methods for accomplishing the partial or complete termination of the interlocal agreement and for disposing of assets and liabilities upon such partial or complete termination.

Additional provisions in the interlocal agreement shall be determined by the participating districts and shall encourage cooperation within the unified system.

(2) Application for unification shall be made to the state committee. The application shall contain a copy of the interlocal agreement signed by the president of each participating school board. The state committee shall approve or disapprove applications for unification within forty days after receipt of the application. If the interlocal agreement complies with subsection (1) of this section and all school boards of the participating districts have approved the interlocal agreement, the state committee shall approve the application. Unification agreements shall be effective on June 1 following approval from the state committee for status as a unified system or on the date specified in the interlocal agreement, except that the date shall be on or after June 1 and on or before September 1 for a specified year. The board established in the interlocal agreement may begin meeting any time after the application has been approved by the state committee.

(3) Upon granting the application for unification, the State Department of Education shall recognize the unified system as a single Class II or III district for state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. Except as otherwise required by the department, the unified system shall submit a single report document for each of the reports required of school districts pursuant to Chapter 79 and shall submit a single budget document pursuant to the Nebraska Budget Act and sections 13-518 to 13-522. The class of district shall be the same as the majority of participating districts, excluding Class I districts. If there are an equal number of Class II and Class

III districts in the unified system, the unified system shall be recognized by the department as a Class III district.

(4) The school districts participating in a unified system shall retain their separate identities for all purposes except those specified in this section, and participation in a unified system shall not be considered a reorganization.

**Source:** Laws 1998, LB 1219, § 9; Laws 1999, LB 813, § 10; Laws 2001, LB 797, § 12; Laws 2005, LB 126, § 38; Referendum 2006, No. 422; Laws 2008, LB988, § 5; Laws 2010, LB711, § 1; Laws 2010, LB1071, § 6.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Nebraska Budget Act**, see section 13-501.

#### **79-4,109 Class I district; reaffiliation authorized; effective date; effect.**

A Class I district with more than fifty percent of its valuation affiliated with a single Class II or III district participating in a unified system may reaffiliate so that its entire valuation is affiliated with that Class II or III district. A Class I district which is not entirely within a Class VI system and which does not have more than fifty percent of its valuation affiliated with a Class II or III district may reaffiliate so that its entire valuation is affiliated with a Class II or III district participating in a unified system. The effective date of the reaffiliation shall be the effective date of the Class I district's participation in the unified system. The reaffiliation shall not affect any existing bond obligations.

**Source:** Laws 1998, LB 1219, § 10; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

#### **79-4,110 Class I district; merge, dissolve, or reorganize; limitations.**

A Class I district of which eight percent or more of the district's valuation is affiliated with a single Class II or III district shall not merge, dissolve, or reorganize unless:

(1) All Class II or III districts with which eight percent or more of the Class I district's valuation is affiliated are also reorganizing in the same reorganization plan, petition, or election and that plan, petition, or election requires approval by either the school boards or legal voters of such Class II or III districts;

(2) The Class I district's valuation is being merged with the Class II or III districts with which the property is affiliated;

(3) The Class I district has been participating in a unified system for a minimum of seven school fiscal years and the unified system includes at least one Class II or III district reorganizing in the same reorganization plan or petition; or

(4) The school boards of all Class II or III districts with which eight percent or more of the Class I district's valuation is affiliated vote to approve the plan or petition.

**Source:** Laws 1998, LB 1219, § 11; Laws 2002, LB 460, § 1; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

#### **79-4,111 Unified system; Class I districts; treatment.**

The affiliation agreement for a Class I district that is affiliated with a Class II or III district that is participating in a unified system shall continue unmodified unless (1) the Class I district reaffiliates pursuant to section 79-4,109 or (2) the Class I district's entire valuation is included in the unified system and the Class I district chooses to participate in the unified system by becoming a party to the interlocal agreement pursuant to section 79-4,108.

**Source:** Laws 1998, LB 1219, § 12; Laws 2005, LB 126, § 39; Referendum 2006, No. 422; Laws 2008, LB988, § 6.

(m) REORGANIZATION OF CLASS I AND VI SCHOOL DISTRICTS

**79-4,112 Repealed. Referendum 2006, No. 422.**

**79-4,113 Repealed. Referendum 2006, No. 422.**

**79-4,114 Repealed. Referendum 2006, No. 422.**

**79-4,115 Repealed. Referendum 2006, No. 422.**

**79-4,116 Repealed. Referendum 2006, No. 422.**

(n) LEARNING COMMUNITY REORGANIZATION ACT

**79-4,117 Act, how cited.**

Sections 79-4,117 to 79-4,129 shall be known and may be cited as the Learning Community Reorganization Act.

**Source:** Laws 2006, LB 1024, § 28; Laws 2007, LB641, § 5.

**79-4,118 Terms, defined.**

For purposes of the Learning Community Reorganization Act:

(1) Learning community has the definition found in section 79-2101;

(2) Reorganization of school districts means the formation of new school districts that will become members of a learning community, the alteration of boundaries of established school districts that are members of a learning community, the dissolution or disorganization of established school districts that are members of a learning community through or by means of any one or combination of the methods set out in section 79-4,120, and any other alteration of school district boundaries involving a school district that is a member of a learning community; and

(3) State committee means the State Committee for the Reorganization of School Districts created by section 79-435.

**Source:** Laws 2006, LB 1024, § 29.

**79-4,119 Reorganization; plan required.**

Any reorganization of school districts that affects a school district that is a member of a learning community, except dissolutions pursuant to section 79-470, 79-498, 79-499, or 79-598, shall only be accomplished pursuant to the Learning Community Reorganization Act, based on a plan submitted to the state committee by the learning community coordinating council.

**Source:** Laws 2006, LB 1024, § 30.

**79-4,120 Methods authorized.**

Reorganization of school districts pursuant to the Learning Community Reorganization Act may be accomplished through or by means of any one or more of the following methods: (1) The creation of new districts; (2) the uniting of one or more established districts; (3) the subdivision of one or more established districts; (4) the transfer and attachment to an established district of a part of the territory of one or more districts; and (5) the dissolution or disorganization of an established district for any of the reasons specified by law.

**Source:** Laws 2006, LB 1024, § 31.

**79-4,121 Plan review; state committee; considerations.**

In the review of a plan for the reorganization of school districts pursuant to the Learning Community Reorganization Act, the state committee shall give due consideration to (1) the educational needs of the learning community, (2) economies in administration costs, (3) the future use of existing satisfactory school buildings, sites, and play fields, (4) the convenience and welfare of pupils, (5) transportation requirements, (6) the equalization of the educational opportunity of pupils, (7) the amount of outstanding indebtedness of each district and proposed disposition thereof, (8) the equitable adjustment of all property, debts, and liabilities among the districts involved, (9) any additional statutory requirements for learning community organization, and (10) any other matters which, in its judgment, are of importance. The learning community coordinating council proposing the plan of reorganization, in preparation or review of a plan for reorganization, shall take into consideration any advice or suggestions offered by the state committee.

**Source:** Laws 2006, LB 1024, § 32.

**79-4,122 Public hearings; record; notice.**

Before any plan of reorganization submitted by a learning community coordinating council is approved by the state committee pursuant to the Learning Community Reorganization Act, the state committee shall hold one or more public hearings. At such hearings, the state committee shall hear any and all persons interested with respect to the areas of consideration listed in section 79-4,121. The state committee shall keep a record of all hearings in the formulation or approval of plans for the reorganization of school districts. Notice of such public hearings of the state committee shall be given by publication in a legal newspaper of general circulation in the county or counties in which the affected districts are located at least ten days prior to such hearing.

**Source:** Laws 2006, LB 1024, § 33.

**79-4,123 Plan of reorganization; contents.**

After one or more public hearings have been held, the state committee may approve a plan or plans of reorganization pursuant to the Learning Community Reorganization Act. Such plan shall contain:

(1) A description of the proposed boundaries of the reorganized districts and a designation of the class for each district;

(2) A summary of the reasons for each proposed change, realignment, or adjustment of the boundaries which shall include, but not be limited to, an explanation of how the plan complies with any statutory requirements for learning community organization and an assurance that the plan does not increase the geographic size of any school district that has more than twenty-five thousand students;

(3) A summary of the terms on which reorganization is to be made between the reorganized districts. Such terms shall include a provision for initial school board districts or wards within the proposed district, which proposed initial school board districts or wards shall be determined by the state committee taking into consideration population and valuation, a determination of the number of members to be appointed to the initial school board for Class II and III school districts, and a determination of the terms of the board members first appointed to membership on the board of the newly reorganized district;

(4) A statement of the findings with respect to the location of schools, the utilization of existing buildings, the construction of new buildings, and the transportation requirements under the proposed plan of reorganization;

(5) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization; and

(6) Such other matters as the state committee determines proper to be included.

**Source:** Laws 2006, LB 1024, § 34; Laws 2014, LB946, § 38.  
Operative date January 1, 2015.

**79-4,124 State committee; notification.**

The state committee shall, within thirty days after holding the hearings provided for in section 79-4,122, notify the learning community whether or not it approves or disapproves such plan or plans.

**Source:** Laws 2006, LB 1024, § 35.

**79-4,125 Disapproved plan; return to council.**

If the state committee disapproves the plan pursuant to the Learning Community Reorganization Act, it shall be considered a disapproved plan and returned to the learning community coordinating council as a disapproved plan.

**Source:** Laws 2006, LB 1024, § 36; Laws 2007, LB641, § 6.

**79-4,126 Approved plan; procedure.**

When a plan of reorganization or any part thereof has been approved by the state committee pursuant to the Learning Community Reorganization Act, it shall be designated as the final approved plan and shall be returned to the learning community coordinating council to be submitted to the school boards of the affected school districts for approval or rejection by such school boards within forty-five days.

**Source:** Laws 2006, LB 1024, § 37; Laws 2007, LB641, § 7.

**79-4,127 Indebtedness.**

Whenever two or more school districts are involved in a reorganization plan pursuant to the Learning Community Reorganization Act, the old districts shall continue to be responsible for any indebtedness incurred before the reorganization takes place unless a different arrangement is included in the plan.

**Source:** Laws 2006, LB 1024, § 38.

**79-4,128 County clerk; duties; filings required.**

If the plan of reorganization is approved by the state committee and the school board of each affected school district pursuant to the Learning Community Reorganization Act, the county clerk shall proceed to cause the changes, realignment, and adjustment of districts to be carried out as provided in the plan. The county clerk shall classify the school districts according to the plan of reorganization. He or she shall also file certificates with the county assessor, county treasurer, and state committee showing the boundaries of the various districts under the approved plan of reorganization.

**Source:** Laws 2006, LB 1024, § 39; Laws 2007, LB641, § 8.

**79-4,129 State committee; duties; school board; appointments; terms; duties.**

(1) Within thirty days after the classification of the reorganized school districts by the county clerk under section 79-4,128, the state committee shall appoint from among the legal voters of each new school district created the number of school board members specified in the plan of reorganization. A reorganized school district shall be formed and organized and shall have a school board not later than April 1 following the last legal action, as prescribed in section 79-4,128, necessary to effect the changes in boundaries as set forth in the plan of reorganization, although the physical reorganization of such reorganized school district shall take effect July 1 following the classification of the reorganized school districts under section 79-4,128. The first board shall be appointed on an at-large basis, and all boards shall be elected at large until such time as election districts are established as provided in section 32-554.

(2) In appointing the first school board of a Class II school district, the members shall be appointed so that the terms of approximately one-half of the members expire on the date of the first regular meeting of the board in January after the first even-numbered year following their appointment and the terms of the remaining members expire on the date of the first regular meeting of the board in January after the second even-numbered year following their appointment. At the statewide general election in the first even-numbered year after the reorganization, approximately one-half of the board members in each Class II school district shall be elected to terms of four years. Thereafter all candidates shall be elected to terms of four years. Each member's term shall begin on the date of the first regular meeting of the board in January following his or her election.

(3) In appointing the first school board of a Class III school district, the terms of approximately one-half of the members shall expire on the first Thursday after the first Tuesday in January after the first even-numbered year following their appointment and the terms of the remaining members shall expire on the first Thursday after the first Tuesday in January after the second even-numbered year following their appointment. Thereafter all Class III district school boards shall be elected to terms of four years.

(4) In appointing the first school board of a Class IV school district, the members shall be appointed so that the terms of three members shall expire on the third Monday in May of the first odd-numbered year following their appointment and the terms of four members shall expire on the third Monday in May of the second odd-numbered year following their appointment. Thereafter all Class IV district school boards shall be elected to terms of four years.

(5) In appointing the first school board of a Class V school district after a reorganization under this section with a nine-member board serving terms of four years, the terms of the members shall expire as provided in section 32-545. All Class V district school boards shall be elected to terms of four years.

(6) The school boards appointed under this section shall proceed at once to organize in the manner prescribed by law.

**Source:** Laws 2006, LB 1024, § 40; Laws 2013, LB125, § 5; Laws 2014, LB946, § 39.

Operative date January 1, 2015.

**79-4,130 Repealed. Laws 2007, LB 641, § 54.**

## ARTICLE 5 SCHOOL BOARDS

### Cross References

**For provisions of law governing conflict of interest on contracts,** see sections 49-14,102 to 49-14,103.07.

**Learning community coordinating councils:**

Election, membership, terms, see section 32-546.01.

Powers and duties, see section 79-2101 et seq.

**Local health department provisions,** when applicable, see section 71-1636.

### (a) SCHOOL BOARD POWERS

#### Section

- 79-501. School board; property; maintenance; hiring of superintendent, teachers, and personnel.
- 79-502. Repealed. Laws 2008, LB 850, § 5.
- 79-503. Year-round operation of public schools; legislative intent.
- 79-504. Year-round operation of public schools; conversion; procedure.
- 79-505. Year-round operation of public schools; notice to State Board of Education.
- 79-506. Insurance coverage; authorized.
- 79-507. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-508. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-509. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-510. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-511. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-512. Associations of school boards; membership dues; payment authorized.
- 79-513. Legal services; payment authorized.
- 79-514. Retirement annuity contracts; purchase; contributions to retirement plans; withholding of salary.
- 79-515. Contracts for services, supplies, and collective-bargaining agreements; authorized.
- 79-516. School board; power to indemnify; liability insurance; purchase.
- 79-517. School activities pass; volunteer, defined.
- 79-518. School activities pass; authorized; when.
- 79-519. Class I or Class II school district; prosecution or defense of proceedings.
- 79-520. Class III school district; board of education; selection of officers; rules and regulations; compensation.
- 79-521. Class IV school district; board of education; officers; rules and regulations; taking of testimony.

## SCHOOLS

### Section

- 79-522. Class V school district; board of education; officers; rules and regulations; testimony; power to compel.  
79-523. Class VI school district; board of education; powers and duties.  
79-524. Class I, II, III, IV, or VI school district; permanent and continuing census.

### (b) SCHOOL BOARD DUTIES

- 79-525. Class I, II, III, IV, or VI school district; school board; duty to maintain schoolhouse; accounts.  
79-526. Class I, II, III, IV, or VI school district; school board; schools; supervision and control; powers.  
79-527. Dropouts; report to Commissioner of Education; attendance reports.  
79-527.01. Council on Student Attendance; created; members; duties; report.  
79-528. Reports; filing requirements; contents.  
79-529. Failure to file annual financial report; use of other reports.  
79-530. Parental involvement; legislative findings.  
79-531. Parental involvement; public school district; adopt policy.  
79-532. Parental involvement; policy; contents.  
79-533. Parental involvement; policy; hearing; review.  
79-534. Class III school district; board of education.  
79-535. Class V school districts; control; powers.  
79-536. Summer school; children in school system; unsatisfactory progress; summer school sessions; curricula.  
79-537. Class V school district; school board; school census; duty to take.  
79-538. Repealed. Laws 1997, LB 347, § 59.  
79-539. School board; board of education; official policy respecting personnel files and student records; rules and regulations; adopt; publish; restrictions.

### (c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

- 79-540. Class I school district; district meetings; challenge voter qualifications; oath.  
79-541. Class I school district; district elections or meetings; refusal to take oath; false oath; penalty.  
79-542. Class I school district; district elections or meetings; voice vote; challenge.  
79-543. School board member; qualifications.  
79-544. School board members; contract to teach prohibited.  
79-545. District officers; vacancy.  
79-546. School board, board of education, or other governing board; reimbursement for expenses.  
79-547. Class II or Class III school district; school board; board of education; members; number.  
79-548. Class I school district; change to six-member board; percentage of vote required; election; change back to three-member board; board members; election; teachers; qualifications.  
79-549. School board; Class III school district; members; caucus or election; procedure.  
79-550. Class II or III school district elections; change number of board members; resolution; contents; change manner of election.  
79-551. Class IV school district; board of education; members; election; student member.  
79-552. Class V school district; board of education; members; election by district; procedure; qualifications.  
79-553. Class VI school district; board of education; members; election.

### (d) SCHOOL BOARD MEETINGS AND PROCEDURES

- 79-554. Class I, II, III, or VI school district; school board; quorum; meetings; open to public.  
79-555. Class III school district; board of education; meetings; when held.  
79-556. Class I school district; annual school meeting; time; place; school year.  
79-557. Class I school districts; special school meetings; how called; notice; limitation upon transaction of business.

## SCHOOL BOARDS

### Section

- 79-558. Class I school districts; annual or special meetings; notice; change of schoolhouse site; building, purchase, or lease of schoolhouse.
- 79-559. Class II, III, IV, or VI school district; school board or board of education; student member; term; qualifications.
- 79-560. Class IV school district; board of education; meetings; open to public.
- 79-561. Class V school district; board of education; meetings; open to public.
- 79-562. Class V school district; board of education; meetings; quorum; attendance, how compelled; absence; effect.
- 79-563. Class VI school district; school board; meetings.
- (e) SCHOOL BOARD OFFICERS
- 79-564. Class II or III school district; school board; officers; elect.
- 79-565. Class I school district; school district officers; enumeration; election; term.
- 79-566. Class IV school district; board of education; officers; employees, selection.
- 79-567. Class V school district; board of education; officers and employees; selection; terms.
- 79-568. Class VI school district; board of education; officers.
- 79-569. Class I, II, III, IV, or VI school district; president; powers and duties.
- 79-570. Class I, II, III, IV, or VI school district; president; meetings; maintenance of order.
- 79-571. Class I, II, III, IV, or VI school district; meetings; disorderly conduct; penalty.
- 79-572. Class I, II, III, IV, or VI school district; president; actions for or against district; appearance required.
- 79-573. Class V school district; school board; president; duties.
- 79-574. Class V school district; school elections; notice; duty of president to give.
- 79-575. Secretary; disbursements; how made.
- 79-576. Class I, II, III, IV, or VI school district; secretary; duty as clerk of board.
- 79-577. Class I, II, III, IV, or VI school district; secretary; books, records, and reports; duty to preserve.
- 79-578. Class I, II, III, IV, or VI school district; secretary; school census; duty to take; time allowed.
- 79-579. Class I, II, III, IV, or VI school district; district officers; disputes over orders; county attorney; duty to investigate; mandamus.
- 79-580. Class I, II, III, and VI school district; board of education; claims against; record of proceedings; secretary; duty to publish.
- 79-581. Class I, II, III, or VI school district; publication of claims and summary of proceedings; noncompliance by secretary; penalty.
- 79-582. Class IV school district; secretary of the board of education; duties.
- 79-583. Class V school district; school board; secretary; oath; bond; duties.
- 79-584. Class V school district; board of education; disbursements; how made; accounts; audit.
- 79-585. Class VI school district; board of education; assistant secretary; compensation.
- 79-586. Class I, II, III, IV, or VI school district; treasurer; bond or insurance; filing; failure to give; effect.
- 79-587. Class I, II, III, IV, or VI school district; treasurer; district funds; receipt and disbursement.
- 79-588. Class I, II, III, IV, or VI school district; treasurer; records and reports required; delivery upon expiration of office.
- 79-589. Board of education; Class III school district outside of city or village or more than one-half of district within a city of metropolitan class; treasurer; bond or insurance; duties.
- 79-590. Class III school district; board of education; treasurer; duties; bond or insurance; compensation.
- 79-591. Class IV school district; treasurer; duties; reports; bond or insurance.
- 79-592. Class V school district; treasurer; bond or insurance; duties.
- 79-593. Class V school district; board of education; vice president; duties.
- 79-594. Class II, III, IV, or VI school district; superintendent; appointment; salary; term.
- 79-595. Class IV school district; associate superintendent of business affairs; duties.

Section

- 79-596. Class IV school district; associate superintendent of business affairs; bond.
- 79-597. Class IV school district; accounts; audit; disbursements; how made.  
(f) PROVIDING EDUCATION OUTSIDE THE DISTRICT
- 79-598. Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.
- 79-599. Pupil; attend school in adjoining state; application; contents.
- 79-5,100. Pupil; attend school in adjoining state; application; procedure; authorization, when.
- 79-5,101. Pupil; attend school in adjoining state; reciprocity required.
- 79-5,102. Pupil; attend school in adjoining state; tuition; payment by sending district.
- 79-5,103. Pupil; attend school in adjoining state; records; costs; determination.
- 79-5,104. Class II or III school district; tuition of pupil attending school outside of district; payment, when.
- 79-5,105. Class III, IV, or V school district; children residing on federal property; contracts with federal government for instruction; supervisory services of districts; maintenance and operation of schools.
- 79-5,106. Class III, IV, or V school district; children residing on federal property; contracts with federal government for instruction; effect of existing available facilities.
- 79-5,107. Class II or VI school district; board of education; student's attendance at accredited junior, junior-senior, or senior high school; payment of tuition.
- 79-5,108. Board of education of Class VI school district; student's attendance at accredited high school outside of state; payment of tuition; when; appeal.

(a) SCHOOL BOARD POWERS

**79-501 School board; property; maintenance; hiring of superintendent, teachers, and personnel.**

The school board or board of education of a Class I, II, III, IV, or VI school district shall have the care and custody of the schoolhouse and other property of the district and shall have authority to hire a superintendent and the required number of teachers and other necessary personnel.

**Source:** Laws 1881, c. 78, subdivision V, § 9, p. 354; R.S.1913, § 6789; C.S.1922, § 6330; C.S.1929, § 79-509; R.S.1943, § 79-509; Laws 1949, c. 256, § 80, p. 719; Laws 1971, LB 292, § 8; R.S.1943, (1994), § 79-441; Laws 1996, LB 900, § 254.

Members of school board act in a representative capacity and not as individuals. Greer v. Chelowski, 162 Neb. 450, 76 N.W.2d 438 (1956).

School board has no authority to build additions which are not repairs. School Dist. No. 35 of Sherman County v. Randolph, 57 Neb. 546, 77 N.W. 1073 (1899).

**79-502 Repealed. Laws 2008, LB 850, § 5.**

**79-503 Year-round operation of public schools; legislative intent.**

It is the intent of the Legislature to promote increased efficiency in the utilization of public schoolhouses and other school facilities by providing for a program of year-round operation of the public schools of this state. The Legislature finds that the cost of education is substantially increased when schoolhouses sit idle for three months of the year and that the rural and pioneer conditions which dictated summer closing of public schools no longer prevail in many of the school districts of the state.

**Source:** Laws 1973, LB 65, § 1; Laws 1993, LB 348, § 7; R.S.1943, (1994), § 79-201.01; Laws 1996, LB 900, § 256.

**79-504 Year-round operation of public schools; conversion; procedure.**

Any public school district in this state may convert any or all of the schools in the district to year-round operation under sections 79-503 to 79-505 upon an affirmative vote of at least seventy-five percent of the school board or board of education. The vote shall be taken at a public meeting of the board following a special public hearing called for the purpose of receiving testimony on such conversion. The board shall give at least seven calendar days' notice of the time, place, and purpose of such hearing and shall publish such notice at least once in a newspaper of general circulation in the school district. Such schools shall meet all State Board of Education rules and regulations pertaining to accreditation.

**Source:** Laws 1973, LB 65, § 2; Laws 1993, LB 348, § 8; R.S.1943, (1994), § 79-201.02; Laws 1996, LB 900, § 257.

**79-505 Year-round operation of public schools; notice to State Board of Education.**

No public school district shall convert to a year-round operation without notifying the State Board of Education of compliance with sections 79-503 to 79-505.

**Source:** Laws 1973, LB 65, § 3; Laws 1993, LB 348, § 9; R.S.1943, (1994), § 79-201.03; Laws 1996, LB 900, § 258.

**79-506 Insurance coverage; authorized.**

The school board or board of education of any Class I, II, III, IV, V, or VI school district may permit its members to participate in the school district's hospitalization, medical, surgical, accident, sickness, or term life insurance coverage or any one or more of such coverages. A board member electing to participate in the insurance program of the school district shall pay both the employee and the employer portions of the premium for such coverage.

A school board or board of education which opts to permit its members to participate in insurance coverage under this section shall report quarterly at a board meeting the board members who have elected such coverage. Such a report shall be made available in the school district office for review by the public upon request.

**Source:** Laws 2008, LB850, § 1.

**79-507 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-508 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-509 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-510 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-511 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-512 Associations of school boards; membership dues; payment authorized.**

The school board or board of education of any school district in this state may pay from its school funds an amount to be determined by the board for membership dues in associations of school boards or boards of education.

**Source:** Laws 1957, c. 345, § 1, p. 1188; R.S.1943, (1994), § 79-4,149; Laws 1996, LB 900, § 265.

**79-513 Legal services; payment authorized.**

The school board or board of education of any school district in this state may pay from its school funds for the legal services of an attorney employed by the board when it deems legal counsel necessary or advisable.

**Source:** Laws 1957, c. 345, § 2, p. 1188; R.S.1943, (1994), § 79-4,150; Laws 1996, LB 900, § 266.

**79-514 Retirement annuity contracts; purchase; contributions to retirement plans; withholding of salary.**

(1) The school board or board of education of any school district has the authority to (a) purchase retirement annuity contracts for any or all of its employees from any insurance company licensed to do business in the State of Nebraska, (b) enter into contracts with its employees providing for the purchase by it of such retirement annuity contracts, (c) provide for the purchase by it of such retirement annuity contracts in the general contract of employment with any or all of its employees, or (d) for the purposes of separation payments made at retirement and early retirement inducements, make contributions picked up under section 414(h) of the Internal Revenue Code to plans under section 401(a) or 403(a) of the code and make contributions to plans under section 403(b) of the code.

(2) Nothing in this section nor any other provision of Chapter 79 shall be construed to authorize a school board or board of education of any school district to offer a separate plan classified as a qualified plan under section 401(a) of the Internal Revenue Code unless specifically listed in this section.

(3) When necessary in connection with the purchase of retirement annuity contracts, any such employee may execute an order authorizing the withholding of necessary amounts from any wages or salary payable to the employee and such order and revocation thereof shall be executed in the manner and form required by section 44-1609.

**Source:** Laws 1963, c. 465, § 1, p. 1493; R.S.1943, (1994), § 79-4,152; Laws 1996, LB 900, § 267; Laws 2005, LB 329, § 1.

**79-515 Contracts for services, supplies, and collective-bargaining agreements; authorized.**

The school board or board of education of any school district may enter into contracts under such terms and conditions as the board deems appropriate, for periods not to exceed four years, for the provision of utility services, refuse disposal, transportation services, maintenance services, financial services, insurance, security services, and instructional materials, supplies, and equipment and for collective-bargaining agreements with employee groups. This section does not permit multiyear contracts with individual school district employees.

**Source:** Laws 1984, LB 333, § 1; R.S.1943, (1994), § 79-4,154.01; Laws 1996, LB 900, § 268.

A contract continuation clause does not create a contract of indefinite duration in violation of this section. Central City Ed. Assn. v. Merrick Cty. Sch. Dist., 280 Neb. 27, 783 N.W.2d 600 (2010).

**79-516 School board; power to indemnify; liability insurance; purchase.**

(1) For purposes of this section, (a) school board has the definition found in section 79-101 and (b) school district has the definition found in such section.

(2) A school district 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 school district, by reason of the fact that such person is or was a school board member or an officer, employee, or agent of the school district, 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 school district 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 school district and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(3) A school district 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 school district to procure a judgment in its favor by reason of the fact that such person is or was a school board member or an officer, employee, or agent of the school district, 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 school district, 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 school district 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.

(4) To the extent that a school board member or an officer, employee, or agent of a school district has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (2) and (3) of this section or in defense of any claim, issue, or matter in such action, suit, or proceeding, he or she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with such defense.

(5) Any indemnification under such subsections, unless ordered by a court, shall be made by the school district only as authorized in the specific case upon a determination that indemnification of the school board member or the officer, employee, or agent of the school district 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 school board members by a majority vote of a quorum consisting of school 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.

(6) Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the school district in advance of the final disposition of such action, suit, or proceeding as authorized in the manner provided in subsection (5) of this section upon receipt of an undertaking by or on behalf of the school board member or the officer, employee, or agent of the school district to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by the school district as authorized in this section.

(7) 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 school board member or an officer, employee, or agent of the school district and shall inure to the benefit of the heirs, executors, and administrators of such person.

(8) A school district may purchase and maintain insurance on behalf of any person who is or was a school board member or an officer, employee, or agent of the school district 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 school district would have the power to indemnify him or her against such liability under this section.

**Source:** Laws 1973, LB 475, § 1; Laws 1987, LB 285, § 1; Laws 1993, LB 239, § 1; R.S.1943, (1994), § 79-4,155; Laws 1996, LB 900, § 269.

The school district is not required to indemnify its board members and it may not do so if the action against the board members is by or in the right of the school district. School

districts have the authority to purchase insurance. Sandy Creek P.S. v. St. Paul Surplus Lines Ins. Co., 222 Neb. 424, 384 N.W.2d 279 (1986).

#### **79-517 School activities pass; volunteer, defined.**

For purposes of section 79-518, volunteer means a person who is not an elected or appointed official or employee of a school district who, at the request or with the permission of the school board or board of education of the school district, engages in activities related to the purposes and functions of the school district or for its general benefit.

**Source:** Laws 1994, LB 1310, § 8; R.S.1943, (1994), § 79-4,246; Laws 1996, LB 900, § 270.

#### **79-518 School activities pass; authorized; when.**

The school board or board of education of any school district may authorize the issuance of a pass to any elected or appointed official, employee, retired employee, or volunteer of the district, 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 school 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.

**Source:** Laws 1994, LB 1310, § 7; R.S.1943, (1994), § 79-4,247; Laws 1996, LB 900, § 271.

**79-519 Class I or Class II school district; prosecution or defense of proceedings.**

The legal voters of a Class I or Class II school district may also give such directions and make such provisions as they deem necessary in relation to the prosecution or defense of any proceeding in which the district may be a party or interested.

**Source:** Laws 1881, c. 78, subdivision II, § 16, p. 343; R.S.1913, § 6747; C.S.1922, § 6288; C.S.1929, § 79-220; R.S.1943, § 79-227; Laws 1949, c. 256, § 192, p. 754; R.S.1943, (1994), § 79-508; Laws 1996, LB 900, § 272; Laws 1997, LB 345, § 19.

Section intended to apply to action by or against school board, does not permit legal voters in school district to super-  
cede action of school board authorized under statute relating to creation of or changing of boundaries of school districts. Kos-  
micki v. Kowalski, 184 Neb. 639, 171 N.W.2d 172 (1969).

**79-520 Class III school district; board of education; selection of officers; rules and regulations; compensation.**

The board of education of a Class III school district has power to select its own officers and make its own rules and regulations not inconsistent with any statute applicable to such district. No member of the board, except the secretary, shall accept or receive any compensation for services performed in discharging the duties of his or her office.

**Source:** Laws 1881, c. 78, subdivision XIV, § 7, p. 379; Laws 1899, c. 62, § 8, p. 293; Laws 1901, c. 63, § 9, p. 440; R.S.1913, § 6954; C.S.1922, § 6588; C.S.1929, § 79-2507; R.S.1943, § 79-2509; Laws 1949, c. 256, § 240, p. 771; R.S.1943, (1994), § 79-807; Laws 1996, LB 900, § 273.

**79-521 Class IV school district; board of education; officers; rules and regulations; taking of testimony.**

The board of education of a Class IV school district has power to select its own officers and make rules and regulations necessary to carry out the board's legal duties. The board of education, or any committee of the members of the board, has power to compel the attendance of witnesses for the investigation of matters that may come before them. The presiding officer of the board of education or the chairperson of such committee may administer the requisite oaths, and such board or committee has the same authority to compel the giving of testimony as is conferred on courts of justice.

**Source:** Laws 1949, c. 256, § 211, p. 760; R.S.1943, (1971), § 79-524; Laws 1971, LB 450, § 3; R.S.1943, (1994), § 79-907; Laws 1996, LB 900, § 274.

**79-522 Class V school district; board of education; officers; rules and regulations; testimony; power to compel.**

The board of education of a Class V school district has power to select its own officers and make its rules and regulations. The board or any committee of the members of the board has power to compel the attendance of witnesses for the investigation of matters that may come before it. The presiding officer of the board or the chairperson of such committee for the time being may administer

the requisite oaths, and such board or committee has the same authority to compel the giving of testimony as is conferred on courts of justice.

**Source:** Laws 1891, c. 45, § 7, p. 319; R.S.1913, § 7015; C.S.1922, § 6646; C.S.1929, § 79-2709; R.S.1943, § 79-2709; Laws 1949, c. 256, § 255, p. 777; R.S.1943, (1994), § 79-1003.04; Laws 1996, LB 900, § 275.

The board of education is authorized to make rules and regulations. *Galstan v. School Dist. of Omaha*, 177 Neb. 319, 128 N.W.2d 790 (1964).

**79-523 Class VI school district; board of education; powers and duties.**

The board of education of a Class VI school district has the same powers and duties as and shall be governed by the provisions of law governing the school boards in Class I and II school districts for purposes authorized by law, except that the board of a Class VI district may undertake building projects and expend money from a special fund established pursuant to section 79-10,120 in the same manner and subject to the same restrictions as any Class II, III, IV, or V school district, and for such purposes section 79-10,121 shall not apply. The annual meetings as provided in section 79-556 shall not apply to any Class VI school district.

**Source:** Laws 1996, LB 900, § 276.

**79-524 Class I, II, III, IV, or VI school district; permanent and continuing census.**

The school board of any Class I, II, III, IV, or VI school district shall establish a permanent and continuing census or enumeration of school children in the school district. The list in writing of the names of the children and taxpayers shall not be required to be reported, but the names of all of the children belonging to such school district, from birth through twenty years of age, shall instead be kept in a depository maintained by such school district and subject to inspection at all times. Such record shall not or need not include the names of all the taxpayers in the district.

**Source:** Laws 1996, LB 900, § 277; Laws 1999, LB 272, § 72.

Courts will take judicial notice of census. *Kokes v. State ex rel. Koupal*, 55 Neb. 691, 76 N.W. 467 (1898).

Record is best evidence on question of enumeration. *State ex rel. Vale v. School Dist. of City of Superior*, 55 Neb. 317, 75 N.W. 855 (1898).

(b) SCHOOL BOARD DUTIES

**79-525 Class I, II, III, IV, or VI school district; school board; duty to maintain schoolhouse; accounts.**

The school board or board of education of a Class I, II, III, IV, or VI school district shall (1) provide the necessary appendages for the schoolhouse, (2) keep the same in good condition and repair during the time school is taught in the schoolhouse, and (3) keep an accurate account of all expenses incurred. Such account shall be prepared by the secretary, audited by the president and treasurer, and, on their written order, paid out of the general school fund.

**Source:** Laws 1881, c. 78, subdivision IV, § 13, p. 349; R.S.1913, § 6775; C.S.1922, § 6316; C.S.1929, § 79-413; R.S.1943, § 79-415; Laws 1949, c. 256, § 79, p. 719; R.S.1943, (1994), § 79-440; Laws 1996, LB 900, § 278.

This section (formerly section 79-440) gives a school district the power to provide necessary appendages to the schoolhouse and to secure the regular attendance of students at school; necessarily implied in this section is the power to construct an access road when the only party in a position to build the road in the necessary timeframe is the school district. *Robertson v. School Dist. No. 17 of Douglas County*, 252 Neb. 103, 560 N.W.2d 469 (1997).

Claim for transportation should be filed with secretary of district. *George v. School Dist. No. 24 of Red Willow County*, 157 Neb. 791, 61 N.W.2d 401 (1953).

Board was not authorized to purchase residence for teachers. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

Duty to make necessary repairs to school building is vested in school board without special authority from voters. *Morfeld v. Huddin*, 131 Neb. 180, 267 N.W. 350 (1936).

Director, with consent of moderator, may contract for repairs during vacation. *Leonard v. State ex rel. Tressler*, 67 Neb. 635, 93 N.W. 988 (1903).

Architect's fees for plans for new building are general expense. *Fiske v. School Dist. of City of Lincoln*, 59 Neb. 51, 80 N.W. 265 (1899), reversing on rehearing 58 Neb. 163, 78 N.W. 392 (1899).

### **79-526 Class I, II, III, IV, or VI school district; school board; schools; supervision and control; powers.**

(1) The school board or board of education of a Class I, II, III, IV, or VI school district has responsibility for the general care and upkeep of the schools, shall provide the necessary supplies and equipment, and, except as otherwise provided, has the power to cause pupils to be taught in such branches and classified in such grades or departments as may seem best adapted to a course of study which the board shall establish with the consent and advice of the State Department of Education. The board shall make provision for pupils that may enter at any time during the school year. The board shall have a record kept of the advancement of all pupils in each branch of study. The board shall make rules and regulations as it deems necessary for the government and health of the pupils and devise any means as may seem best to secure the regular attendance and progress of children at school.

(2) The school board may make expenditures for supplies, equipment, travel, meals, and lodging for school programs and activities, including extracurricular and interscholastic activities, appropriate for the benefit, government, and health of pupils enrolled in the school district.

**Source:** Laws 1881, c. 78, subdivision V, § 3, p. 352; Laws 1883, c. 72, § 10, p. 293; Laws 1901, c. 61, § 1, p. 433; R.S.1913, § 6783; Laws 1919, c. 151, § 1, p. 339; C.S.1922, § 6324; C.S.1929, § 79-503; R.S.1943, § 79-503; Laws 1945, c. 202, § 1, p. 611; Laws 1949, c. 256, § 82, p. 719; R.S.1943, (1994), § 79-443; Laws 1996, LB 900, § 279; Laws 1997, LB 347, § 15; Laws 2014, LB967, § 5.

Effective date April 3, 2014.

#### **Cross References**

**For powers of health district in counties over 200,000 population,** see section 71-1623.

This section (formerly section 79-443) gives a school district the power to provide necessary appendages to the schoolhouse and to secure the regular attendance of students at school; necessarily implied in this section is the power to construct an access road when the only party in a position to build the road in the necessary timeframe is the school district. *Robertson v. School Dist. No. 17 of Douglas County*, 252 Neb. 103, 560 N.W.2d 469 (1997).

In devising such means as may seem best to secure the regular attendance and progress of children at school, a school board may choose to provide bus transportation. *School Dist. of Waterloo v. Hutchinson*, 244 Neb. 665, 508 N.W.2d 832 (1993).

This section imposes no duty on school boards to provide actual bus service to students. *Warren v. Papillion School Dist.* No. 27, 199 Neb. 410, 259 N.W.2d 281 (1977).

Board of education had power to provide for busing, but duty to do so was not imposed and mandamus not warranted. *Connot v. Monroe*, 193 Neb. 453, 227 N.W.2d 827 (1975).

This section confers power on school boards to establish such branches and grades as the board shall deem best adapted to the school. *State ex rel. Shineman v. Board of Education*, 152 Neb. 644, 42 N.W.2d 168 (1950).

Under former statute, there was no statutory provision authorizing the establishment of a high school in a district organized under article 3. *Griggs v. School District No. 76 of Wayne County*, 152 Neb. 282, 40 N.W.2d 859 (1950).

Right of parent to make reasonable selection from prescribed course of studies which shall be carried by his child in public schools is not limited to any particular school, nor any particular grade. *State ex rel. Kelley v. Ferguson*, 95 Neb. 63, 144 N.W. 1039 (1914).

Two systems of school administration exist, one vesting control in electors at school meeting and one making board of education the governing body. *Gaddis v. School Dist. of City of Lincoln*, 92 Neb. 701, 139 N.W. 280 (1912).

The matter of hiring a teacher for a school is committed to the judgment and discretion of the district board. *State ex rel. Lewellen v. Smith*, 49 Neb. 755, 69 N.W. 114 (1896).

### **79-527 Dropouts; report to Commissioner of Education; attendance reports.**

(1) The superintendent or head administrator of a public school district or a nonpublic school system shall annually report to the Commissioner of Education in such detail and on such date as required by the commissioner the number of students who have dropped out of school. School districts that are members of learning communities shall also provide the learning community coordinating council with a copy of such report on or before the date the report is due to the commissioner.

(2) The superintendent of a public school district shall report on a quarterly basis to the Commissioner of Education as directed by the commissioner regarding individual student information on attendance.

**Source:** Laws 1965, c. 520, § 2, p. 1646; Laws 1989, LB 487, § 2; Laws 1991, LB 511, § 34; Laws 1992, LB 245, § 39; R.S.1943, (1994), § 79-449.01; Laws 1996, LB 900, § 280; Laws 2003, LB 67, § 5; Laws 2006, LB 1024, § 51; Laws 2010, LB800, § 36; Laws 2010, LB1070, § 5; Laws 2013, LB410, § 6.

### **79-527.01 Council on Student Attendance; created; members; duties; report.**

(1)(a) The Council on Student Attendance is created. The council shall consist of:

(i) A member of a school board in any class of school district to be appointed by the State Board of Education;

(ii) Two parents not related to each other who have children attending school in this state to be appointed by the State Board of Education;

(iii) A superintendent or his or her designee of a school district to be appointed by the State Board of Education;

(iv) A student attending a public school in this state to be appointed by the State Board of Education;

(v) A representative of a community or advocacy organization to be appointed by the State Board of Education;

(vi) A county attorney to be appointed by the State Board of Education;

(vii) The probation administrator or his or her designee;

(viii) The Commissioner of Education or his or her designee; and

(ix) The chief executive officer of the Department of Health and Human Services or his or her designee.

(b) The members of the council appointed by the State Board of Education shall serve three-year staggered terms, as designated by the board.

(c) The members of the council shall serve on the council without any additional compensation, but they shall be entitled to receive reimbursement for any actual expenses incurred as necessary incident to such service as provided in sections 81-1174 to 81-1177.

(2) The council shall:

(a) Study and evaluate the data contained in the reports required by subsection (2) of section 79-527;

(b) Develop recommendations to reduce incidents of absenteeism;

(c) Consider whether school district policies and practices for addressing absenteeism are operational and effectively working to address absenteeism and make recommendations for improvements where necessary; and

(d) Review all school district policies developed under subsection (2) of section 79-209 and make specific recommendations for school district policy improvement.

The council may contact a school district or a county attorney for additional information in order to carry out its duties under this section.

(3) The council shall report on its activities electronically to the Legislature on or before October 1 of each year.

**Source:** Laws 2010, LB800, § 37; Laws 2012, LB782, § 149; Laws 2013, LB410, § 7; Laws 2014, LB464, § 35.  
Operative date July 18, 2014.

**79-528 Reports; filing requirements; contents.**

(1)(a) On or before July 20 in all school districts, the superintendent shall file with the State Department of Education a report showing the number of children from five through eighteen years of age belonging to the school district according to the census taken as provided in sections 79-524 and 79-578. On or before August 31, the department shall issue to each learning community coordinating council a report showing the number of children from five through eighteen years of age belonging to the learning community based on the member school districts according to the school district reports filed with the department.

(b) Each Class I school district which is part of a Class VI school district offering instruction (i) in grades kindergarten through five shall report children from five through ten years of age, (ii) in grades kindergarten through six shall report children from five through eleven years of age, and (iii) in grades kindergarten through eight shall report children from five through thirteen years of age.

(c) Each Class VI school district offering instruction (i) in grades six through twelve shall report children who are eleven through eighteen years of age, (ii) in grades seven through twelve shall report children who are twelve through eighteen years of age, and (iii) in grades nine through twelve children who are fourteen through eighteen years of age.

(d) Each Class I district which has affiliated in whole or in part shall report children from five through thirteen years of age.

(e) Each Class II, III, IV, or V district shall report children who are fourteen through eighteen years of age residing in Class I districts or portions thereof which have affiliated with such district.

(f) The board of any district neglecting to take and report the enumeration shall be liable to the school district for all school money which such district may lose by such neglect.

(2) On or before June 30 the superintendent of each school district shall file with the Commissioner of Education a report described as an end-of-the-school-year annual statistical summary showing (a) the number of children attending school during the year under five years of age, (b) the length of time the school

has been taught during the year by a qualified teacher, (c) the length of time taught by each substitute teacher, and (d) such other information as the Commissioner of Education directs. On or before July 31, the commissioner shall issue to each learning community coordinating council an end-of-the-school-year annual statistical summary for the learning community based on the member school districts according to the school district reports filed with the commissioner.

(3)(a) On or before November 1 the superintendent of each school district shall submit to the Commissioner of Education a report described as the annual financial report showing (i) the amount of money received from all sources during the year and the amount of money expended by the school district during the year, (ii) the amount of bonded indebtedness, (iii) such other information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114, and (iv) such other information as the Commissioner of Education directs.

(b) On or before December 15, the commissioner shall issue to each learning community coordinating council an annual financial report for the learning community based on the member school districts according to the annual financial reports filed with the commissioner, showing (i) the aggregate amount of money received from all sources during the year for all member school districts and the aggregate amount of money expended by member school districts during the year, (ii) the aggregate amount of bonded indebtedness for all member school districts, (iii) such other aggregate information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114 for all member school districts, and (iv) such other aggregate information as the Commissioner of Education directs for all member school districts.

(4)(a) On or before October 15 of each year, the superintendent of each school district shall file with the commissioner the fall school district membership report, which report shall include the number of children from birth through twenty years of age enrolled in the district on the last Friday in September of a given school year. The report shall enumerate (i) students by grade level, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

(b) On or before October 15 of each year, each learning community coordinating council shall issue to the department a report which enumerates the learning community levies pursuant to subdivisions (2)(b) and (g) of section 77-3442 and total assessed valuation for the current fiscal year.

(c) On or before November 15 of each year, the department shall issue to each learning community coordinating council the fall learning community membership report, which report shall include the aggregate number of children from birth through twenty years of age enrolled in the member school districts on the last Friday in September of a given school year for all member school districts. The report shall enumerate (i) the aggregate students by grade level for all member school districts, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs for all member school districts.

(d) When any school district fails to submit its fall membership report by November 1, the commissioner shall, after notice to the district and an

opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money.

**Source:** Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1885, c. 79, § 1, p. 323; Laws 1889, c. 78, § 12, p. 547; R.S.1913, § 6779; C.S.1922, § 6320; C.S.1929, § 79-417; R.S.1943, § 79-419; Laws 1949, c. 256, § 90, p. 723; Laws 1959, c. 391, § 1, p. 1346; Laws 1969, c. 706, § 4, p. 2710; Laws 1977, LB 487, § 1; Laws 1978, LB 874, § 1; Laws 1979, LB 187, § 230; Laws 1985, LB 662, § 32; Referendum 1986, No. 400; Laws 1989, LB 487, § 3; Laws 1990, LB 1090, § 6; Laws 1990, LB 1059, § 36; Laws 1991, LB 511, § 35; Laws 1992, LB 245, § 40; Laws 1992, LB 1001, § 16; Laws 1994, LB 858, § 6; Laws 1994, LB 1310, § 3; R.S.1943, (1994), § 79-451; Laws 1996, LB 900, § 281; Laws 1997, LB 269, § 59; Laws 1997, LB 806, § 27; Laws 1998, Spec. Sess., LB 1, § 13; Laws 1999, LB 272, § 73; Laws 1999, LB 813, § 11; Laws 2001, LB 797, § 13; Laws 2003, LB 67, § 6; Laws 2003, LB 394, § 6; Laws 2006, LB 1024, § 52; Laws 2007, LB641, § 9; Laws 2009, LB549, § 20; Laws 2010, LB1070, § 6.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-529 Failure to file annual financial report; use of other reports.**

(1) When the superintendent of a school district fails to file the annual financial report on or before the date required by subdivision (3)(a) of section 79-528, the State Department of Education shall use the annual financial report from the immediately preceding fiscal year for purposes of the Tax Equity and Educational Opportunities Support Act.

(2) For purposes of the final calculation of state aid pursuant to section 79-1065, the annual financial report for the most recently available complete data year shall be used.

**Source:** Laws 2013, LB410, § 22.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-530 Parental involvement; legislative findings.**

The Legislature finds and declares:

- (1) That parental involvement is a key factor in the education of children;
- (2) That parents need to be informed of the educational practices affecting their children; and
- (3) That public schools should foster and facilitate parental information about and involvement in educational practices affecting their children.

It is the intent of the Legislature, through the enactment of sections 79-531 to 79-533, to strengthen the level of parental involvement and participation in the public school system of the state.

**Source:** Laws 1994, LB 1161, § 1; R.S.1943, (1994), § 79-4,242; Laws 1996, LB 900, § 283.

**79-531 Parental involvement; public school district; adopt policy.**

On or before July 1, 1995, each public school district in the state shall develop and adopt a policy stating how the district will seek to involve parents in the schools and what parents' rights shall be relating to access to the schools, testing information, and curriculum matters.

**Source:** Laws 1994, LB 1161, § 2; R.S.1943, (1994), § 79-4,243; Laws 1996, LB 900, § 284.

**79-532 Parental involvement; policy; contents.**

The policy required by section 79-531 shall include, but need not be limited to, the following:

(1) How the school district will provide access to parents concerning textbooks, tests, and other curriculum materials used in the school district;

(2) How the school district will handle requests by parents to attend and monitor courses, assemblies, counseling sessions, and other instructional activities;

(3) Under what circumstances parents may ask that their children be excused from testing, classroom instruction, and other school experiences the parents may find objectionable;

(4) How the school district will provide access to records of students;

(5) What the school district's testing policy will be; and

(6) How the school district participates in surveys of students and the right of parents to remove their children from such surveys.

**Source:** Laws 1994, LB 1161, § 3; R.S.1943, (1994), § 79-4,244; Laws 1996, LB 900, § 285.

**79-533 Parental involvement; policy; hearing; review.**

The policy required by section 79-531 shall be developed with parental input and shall be the subject of a public hearing before the school board or board of education of the school district before adoption by the board. The policy shall be reviewed annually and either altered and adopted as altered or reaffirmed by the board following a public hearing.

**Source:** Laws 1994, LB 1161, § 4; R.S.1943, (1994), § 79-4,245; Laws 1996, LB 900, § 286.

**79-534 Class III school district; board of education.**

All Class III school districts shall be under the direction and control of the boards of education elected pursuant to section 32-543.

**Source:** Laws 1881, c. 78, subdivision XIV, § 2, p. 378; Laws 1899, c. 62, § 6, p. 292; Laws 1901, c. 63, § 7, p. 439; R.S.1913, § 6949; C.S.1922, § 6583; C.S.1929, § 79-2502; R.S.1943, § 79-2502;

Laws 1949, c. 256, § 233, p. 768; Laws 1988, LB 802, § 21; Laws 1990, LB 1090, § 16; Laws 1994, LB 76, § 600; R.S.1943, (1994), § 79-802; Laws 1996, LB 900, § 287; Laws 2000, LB 1243, § 3.

Cross References

For qualifications of members of board of education, see section 79-543.  
Vacancies, see section 79-545.

**79-535 Class V school districts; control; powers.**

All Class V school districts shall be under the direction and control of the school board or board of education authorized by section 79-552. The school board or board of education may make expenditures for supplies, equipment, travel, meals, and lodging for school programs and activities, including extra-curricular and interscholastic activities, appropriate for the benefit, government, and health of pupils enrolled in the school district.

**Source:** Laws 1891, c. 45, § 2, p. 317; Laws 1899, c. 62, § 7, p. 292; Laws 1901, c. 63, § 8, p. 440; R.S.1913, § 7008; C.S.1922, § 6639; C.S.1929, § 79-2702; R.S.1943, § 79-2702; Laws 1949, c. 256, § 249, p. 775; Laws 1990, LB 1090, § 17; R.S.1943, (1994), § 79-1001.01; Laws 1996, LB 900, § 288; Laws 2000, LB 1243, § 4; Laws 2006, LB 1024, § 53; Laws 2014, LB967, § 6.  
Effective date April 3, 2014.

**79-536 Summer school; children in school system; unsatisfactory progress; summer school sessions; curricula.**

(1) Summer school means educational opportunities that, except as otherwise provided in this section, are undertaken on a voluntary basis by students who will be entering any of grades one through twelve in the next school year and are offered during the period of time between two consecutive school years.

(2) Summer school may be offered by any school district.

(3) The board of education of any school district may require children between and including the ages of six and fifteen years, regularly enrolled within the system and deemed by the school administration to be making unsatisfactory progress, to attend summer school for up to one-half of a regular school day if in the opinion of the administration they would benefit from the experience. Chief emphasis in such summer classes shall be on reading, language arts, and arithmetic and those areas of personality development especially in need of development. Teachers shall be encouraged to design new and imaginative techniques and curricula not usually used during the regular school year which in the opinion of such teachers will offer new incentives towards learning, with special emphasis on those techniques that seek to develop the students' personalities in a wholesome manner, especially developing pride, self-confidence, and self-control. Teachers of such classes shall not be assigned more than fifteen students, or more than twenty-five students if assisted full time by an aide or paraprofessional. Such students shall be graded at the end of the course upon their relative degree of striving to improve their skills, attitudes, and personalities.

**Source:** Laws 1969, c. 699, § 1, p. 2698; R.S.1943, (1994), § 79-1001.02; Laws 1996, LB 900, § 289; Laws 2006, LB 1024, § 54; Laws 2011, LB235, § 3.

**79-537 Class V school district; school board; school census; duty to take.**

The school board of a Class V school district shall cause to be taken an enumeration of all persons each year from birth through twenty years of age residing in the school district. It shall include such other information as is required by sections 79-524, 79-528, and 79-578, except that the information required by sections 79-524 and 79-578 as to children under five years of age may be limited to the number of children by age level and shall not include the names of all the taxpayers in the district. The board may, at its option, establish a permanent and continuing census or enumeration of school children.

**Source:** Laws 1891, c. 45, § 16, p. 322; R.S.1913, § 7022; C.S.1922, § 6653; C.S.1929, § 79-2716; R.S.1943, § 79-2717; Laws 1945, c. 213, § 1, p. 626; Laws 1949, c. 256, § 263, p. 779; Laws 1957, c. 354, § 1, p. 1201; Laws 1990, LB 1090, § 19; R.S.1943, (1994), § 79-1006; Laws 1996, LB 900, § 290; Laws 1999, LB 272, § 74.

**79-538 Repealed. Laws 1997, LB 347, § 59.****79-539 School board; board of education; official policy respecting personnel files and student records; rules and regulations; adopt; publish; restrictions.**

The school board or board of education of each school district shall adopt and publish an official policy respecting personnel files and student records, which policy shall not conflict in any manner with the rules and regulations of the State Records Administrator adopted pursuant to the Records Management Act.

**Source:** Laws 1973, LB 370, § 3; R.S.1943, (1994), § 79-4,158; Laws 1996, LB 900, § 292.

## Cross References

Records Management Act, see section 84-1220.

## (c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

**79-540 Class I school district; district meetings; challenge voter qualifications; oath.**

If any person offering to vote at any Class I school district meeting is challenged as unqualified by any legal voter of such school district, the chairperson presiding at such meeting shall explain to the person challenged the qualifications of a legal voter. If such person states that he or she is qualified and the challenge is not withdrawn, the chairperson shall administer an oath, reduced to writing, in substance as follows: "You do solemnly swear (or affirm) that you are a citizen of the United States, that you are of the constitutionally prescribed age of an elector or upwards, that you are domiciled in this precinct or ward, which precinct or ward lies in whole or in part within the boundaries of this school district, and that you are registered to vote in this precinct or ward, so help you God." Every person taking such oath and signing his or her name to it shall be permitted to vote on all questions proposed at such meeting.

**Source:** Laws 1881, c. 78, subdivision II, § 5, p. 339; R.S.1913, § 6734; C.S.1922, § 6272; C.S.1929, § 79-205; R.S.1943, § 79-205; Laws 1949, c. 256, § 67, p. 714; Laws 1959, c. 388, § 1, p. 1343; Laws 1969, c. 712, § 3, p. 2738; Laws 1972, LB 1070, § 1; Laws 1973,

LB 557, § 8; Laws 1974, LB 897, § 13; R.S.1943, (1994), § 79-428; Laws 1996, LB 900, § 293; Laws 1997, LB 345, § 20; Laws 1997, LB 347, § 16; Laws 1999, LB 813, § 12.

Oath was filed by challenged voters. *Olsen v. Grosshans*, 160 Neb. 543, 71 N.W.2d 90 (1955). name, or has children of school age. *Cunningham v. Ilg*, 118 Neb. 682, 226 N.W. 333 (1929).

Person whose vote at a district meeting is challenged is required to make oath that he owns property assessed in his

**79-541 Class I school district; district elections or meetings; refusal to take oath; false oath; penalty.**

If any person challenged under section 79-540 refuses to take such oath, his or her vote shall be rejected. Any person who willfully takes a false oath or makes a false affirmation under the provisions of such section shall be deemed guilty of perjury and shall, upon conviction, be fined or imprisoned as provided in section 28-915.

**Source:** Laws 1881, c. 78, subdivision II, § 6, p. 339; R.S.1913, § 6735; C.S.1922, § 6273; C.S.1929, § 79-206; R.S.1943, § 79-206; Laws 1949, c. 256, § 68, p. 715; Laws 1978, LB 748, § 44; R.S.1943, (1994), § 79-429; Laws 1996, LB 900, § 294.

**79-542 Class I school district; district elections or meetings; voice vote; challenge.**

When a vote on any question is taken in any other manner than by ballot, a challenge under section 79-540 immediately after the vote has been taken and previous to an announcement of the vote by the chair shall be deemed to be made when offering to vote and treated in the same manner. An oath shall be taken and reduced to writing as provided in such section.

**Source:** Laws 1881, c. 78, subdivision II, § 7, p. 340; R.S.1913, § 6736; C.S.1922, § 6274; C.S.1929, § 79-207; R.S.1943, § 79-207; Laws 1949, c. 256, § 69, p. 715; R.S.1943, (1994), § 79-430; Laws 1996, LB 900, § 295.

**79-543 School board member; qualifications.**

No person shall file for office, be nominated or elected, or serve as a member of a school board in any class of school district unless he or she is a legal voter in such district.

**Source:** Laws 1971, LB 420, § 1; R.S.1943, (1987), § 79-439.01; Laws 1994, LB 76, § 595; R.S.1943, (1994), § 79-443.01; Laws 1996, LB 900, § 296; Laws 1997, LB 345, § 21.

**Cross References**

**Election and terms of office**, see sections 32-541 to 32-546.

**Learning community coordinating council members**, election, terms, and vacancies, see section 32-546.01.

**79-544 School board members; contract to teach prohibited.**

No member of a school board shall be engaged in a contract to teach pursuant to sections 79-817 to 79-821 with the school district which he or she serves as a board member.

**Source:** Laws 1881, c. 78, subdivision III, § 10, p. 345; Laws 1883, c. 72, § 5, p. 291; R.S.1913, § 6761; C.S.1922, § 6302; C.S.1929, § 79-310; R.S.1943, § 79-310; Laws 1949, c. 256, § 105, p. 727;

Laws 1971, LB 214, § 1; R.S.1943, (1994), § 79-466; Laws 1996, LB 900, § 297; Laws 1999, LB 272, § 75; Laws 2001, LB 242, § 24; Laws 2009, LB163, § 1.

**79-545 District officers; vacancy.**

Vacancies in each school district office shall occur as set forth in section 32-570 and be filled according to such section.

**Source:** Laws 1881, c. 78, subdivision V, § 10, p. 354; R.S.1913, § 6790; C.S.1922, § 6331; C.S.1929, § 79-510; R.S.1943, § 79-510; Laws 1949, c. 256, § 101, p. 726; Laws 1951, c. 276, § 5, p. 930; Laws 1953, c. 291, § 4, p. 990; R.S.1943, (1987), § 79-462; Laws 1994, LB 76, § 596; R.S.1943, (1994), § 79-467.01; Laws 1996, LB 900, § 298.

**79-546 School board, board of education, or other governing board; reimbursement for expenses.**

Except as provided in section 79-1217, all members of a school board, board of education, or other governing board created pursuant to Chapter 79 shall not receive a per diem. Each such board may provide or 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 such boards when determining allowable expenses and reimbursement for such expenses.

**Source:** Laws 1992, LB 1001, § 13; Laws 1993, LB 239, § 2; R.S.1943, (1994), § 79-4,241; Laws 1996, LB 900, § 299.

**Cross References**

Per diem for members of learning community coordinating council, see section 32-546.01.

**79-547 Class II or Class III school district; school board; board of education; members; number.**

(1) Except as otherwise provided in section 79-550, the school board or board of education shall consist of the following members:

- (a) In a Class II district, six members; and
- (b) In a Class III district, six members.

(2) In addition to the members specified in subsection (1) of this section, such school boards or boards of education may include one or more student members selected pursuant to section 79-559.

**Source:** Laws 1969, c. 257, § 37, p. 951; Laws 1982, LB 440, § 2; R.S.1943, (1994), § 79-516.04; Laws 1996, LB 900, § 300; Laws 2014, LB946, § 40.

Operative date January 1, 2015.

**79-548 Class I school district; change to six-member board; percentage of vote required; election; change back to three-member board; board members; election; teachers; qualifications.**

The legal voters of a Class I school district having a school census of more than one hundred fifty persons may, at an annual or special meeting by a

favorable vote of fifty-five percent of the persons in attendance and voting, change to a six-member school board. The district shall continue to have a six-member board until fifty-five percent of the persons in attendance and voting at an annual or special meeting vote to change to a three-member board. Board members of a six-member board shall be elected as provided in section 32-541 or as provided for in subsection (3) of section 79-565. All teachers elected by such a district must meet the same qualifications as do the teachers in Class II districts.

**Source:** Laws 1951, c. 276, § 10, p. 932; Laws 1957, c. 351, § 2, p. 1197; Laws 1961, c. 403, § 1, p. 1220; Laws 1994, LB 76, § 598; R.S.1943, (1994), § 79-601.01; Laws 1996, LB 900, § 301; Laws 1997, LB 345, § 22.

**79-549 School board; Class III school district; members; caucus or election; procedure.**

(1) The school board of any Class III school district that is a member of a learning community may place before the legal voters of the school district the issue of whether to begin to have a caucus for nominations by adopting a resolution to place the issue before the legal voters and certifying the issue to the election commissioner or county clerk prior to September 1 for placement on the ballot at the next statewide general election. The legal voters of the school district may also have the issue placed on the ballot at the statewide general election by circulating a petition and gathering the signatures of the legal voters residing within the school district at least equal to seven percent of the number of persons registered to vote in the school district at the last statewide primary election. The petitions shall be filed with the election commissioner or county clerk for signature verification on or before August 15 prior to a statewide general election. If the election commissioner or county clerk determines that the appropriate number of legal voters signed the petition, he or she shall place the issue on the ballot for the next statewide general election. The issue shall not be placed on the ballot again within four years after voting on the issue at a statewide general election.

(2) Any Class III school district that nominated school board members by caucus pursuant to this section as it existed immediately before July 14, 2006, shall continue such procedure until the legal voters of the district vote not to continue to have a caucus for nominations pursuant to subsection (3) of this section. A caucus shall be held pursuant to subsection (5) of this section not less than seventy days prior to the holding of the election to nominate two or more candidates for each vacancy to be voted upon at the election to be held in conjunction with the statewide primary election pursuant to subsection (1) of section 32-543. No candidate nominated shall have his or her name placed upon the ballot for the general election unless, not more than ten days after his or her nomination, he or she files with the secretary of the school board a written statement accepting the nomination. The secretary of the school board shall certify the names of the candidates to the election commissioner or county clerk who shall prepare the official ballot listing the names as certified and without any area designation. All legal voters residing within the school district shall be permitted to vote at such election.

(3) The school board may place before the legal voters of the school district the issue of whether to continue to have a caucus for nominations by adopting a

resolution to place the issue before the legal voters and certifying the issue to the election commissioner or county clerk prior to September 1 for placement on the ballot at the next statewide general election. The legal voters of the school district may also have the issue placed on the ballot at the statewide general election by circulating a petition and gathering the signatures of the legal voters residing within the school district at least equal to seven percent of the number of persons registered to vote in the school district at the last statewide primary election. The petitions shall be filed with the election commissioner or county clerk for signature verification on or before August 15 prior to a statewide general election. If the election commissioner or county clerk determines that the appropriate number of legal voters signed the petition, he or she shall place the issue on the ballot for the next statewide general election. The issue shall not be placed on the ballot again within four years after voting on the issue at a statewide general election.

(4) If the legal voters vote not to continue to have a caucus, the school board shall determine the number of members to be nominated and elected as provided in subsection (2) of section 32-543. The terms of the members in office at the time of the vote shall be extended to the first Thursday after the first Tuesday in January after the expiration of their terms. At the first general election following the vote, a number of members receiving the greatest number of votes shall be elected for a term of four years and a number of members receiving the next greatest number of votes shall be elected for a term of two years so that approximately one-half of the school board members are elected every two years.

(5) A school district which uses a caucus for nominations shall develop rules and procedures for conducting the caucus which will ensure:

(a) Publication of the rules and procedures by multiple sources if necessary so that every resident of the school district has access to information on the process for placing a name in nomination and voting at the caucus;

(b) Facilities for voting at the caucus which comply with the federal Americans with Disabilities Act of 1990 and which will accommodate a reasonably anticipated number of legal voters;

(c) Election security which will provide for a fair and impartial election, including the secrecy of the ballot, one vote per legal voter, and only legal voters of the school district being allowed to vote;

(d) Equal access to all legal voters of the school district, including the presence of an interpreter at the caucus at the expense of the school district and ballots for the blind and visually impaired to provide access to the process by all legal voters of the school district;

(e) Adequate time and opportunity for legal voters of the school district to exercise their right to vote; and

(f) Notification of nomination to the candidates and to the secretary of the school board.

The rules and regulations shall be approved by the election commissioner or county clerk prior to use for a caucus.

**Source:** Laws 1953, c. 303, § 2, p. 1017; Laws 1969, c. 257, § 43, p. 955; Laws 1972, LB 661, § 85; Laws 1974, LB 435, § 1; Laws 1978, LB 632, § 9; Laws 1982, LB 440, § 3; Laws 1993, LB 348, § 25; Laws 1994, LB 76, § 601; R.S.1943, (1994), § 79-803.03; Laws

1996, LB 900, § 302; Laws 1997, LB 345, § 23; Laws 1997, LB 346, § 6; Laws 1997, LB 764, § 111; Laws 2006, LB 1024, § 55; Laws 2014, LB946, § 41.

Operative date January 1, 2015.

**79-550 Class II or III school district elections; change number of board members; resolution; contents; change manner of election.**

(1) The school board of a Class II or III school district may, by resolution adopted in an odd-numbered year, provide for a change in the number of members on the school board to a minimum of five members and a maximum of nine members to be effective at the beginning of the term of office for school board members elected at the next statewide general election. The school board shall include in the resolution:

(a) A statement of the change in number of members to be added to or eliminated from the school board;

(b) A statement that the change does not take effect until the beginning of the term of office for school board members elected at the next statewide general election;

(c) If the members are not nominated or elected by district or ward in the school district:

(i) If the change in number adds members to the school board, a statement of the number of members to be elected at the next statewide general election, including the members whose terms are expiring and the additional members, and the number of such members to be elected to four-year terms and the number of such members to be elected to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election. The members receiving the highest number of votes shall be elected to four-year terms, and the members receiving the next highest number of votes shall be elected to two-year terms; and

(ii) If the change in number decreases the number of members on the school board, a statement of the number of members to be elected at the next statewide general election, if any, and at the subsequent statewide general election, if necessary, and the number of such members to be elected at such elections to four-year terms and the number of such members to be elected at such elections to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election. The members receiving the highest number of votes shall be elected to four-year terms, and the members receiving the next highest number of votes shall be elected to two-year terms; and

(d) If the members are nominated or elected by district or ward in the school district:

(i) The changes to the boundaries of districts or wards;

(ii) A statement that the changes to the boundaries are effective for purposes of nominating or electing, as applicable, members to the school board beginning with the next statewide primary and general elections but that the changes in boundaries are not effective for purposes of representation until the beginning of the term of office for school board members elected at the next statewide general election;

(iii) A statement of which districts or wards, as changed, are on the ballot at the next statewide primary or general election, as applicable, and whether the members elected from such districts or wards are being elected for four-year terms or two-year terms;

(iv) A statement specifying the newly established districts which each member will represent for the remainder of his or her term, if necessary;

(v) If the change in number adds members to the school board, a statement of the number of members to be elected at the next statewide general election, including the members whose terms are expiring and the additional members, and the districts or wards of such members to be elected to four-year terms and the districts or wards of such members to be elected to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election; and

(vi) If the change in number decreases the number of members on the school board, a statement of the number of members to be elected at the next statewide general election, if any, and at the subsequent statewide general election, if necessary, and the districts or wards of such members to be elected at such elections to four-year terms and the districts or wards of such members to be elected at such elections to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election.

(2) If the members of the school board of a Class III school district are nominated and elected by district or ward, the board may by resolution provide for the nomination of the members by district or ward and the election of the members at large. If the members are nominated by district or ward and elected at large, the board may by resolution provide for the nomination and election of the members by district or ward.

(3) Any Class III school district which has a nine-member school board on January 1, 2015, may continue to have a nine-member school board without complying with the requirements of this section.

**Source:** Laws 1974, LB 592, § 8; Laws 1981, LB 303, § 4; Laws 1994, LB 76, § 602; R.S.1943, (1994), § 79-803.11; Laws 1996, LB 900, § 303; Laws 1997, LB 595, § 5; Laws 2014, LB946, § 42.  
Operative date January 1, 2015.

**79-551 Class IV school district; board of education; members; election; student member.**

The board of education of a Class IV school district shall consist of seven members and also may include a nonvoting student member or members selected pursuant to section 79-559. Voting members shall be elected as provided in section 32-544. Voting members of the board shall begin the duties of their office on the third Monday of the month in which they are elected.

**Source:** Laws 1978, LB 457, § 1; Laws 1979, LB 305, § 1; Laws 1981, LB 303, § 5; Laws 1982, LB 688, § 1; Laws 1982, LB 440, § 4; Laws 1985, LB 244, § 2; Laws 1994, LB 76, § 603; R.S.1943, (1994), § 79-902.01; Laws 1996, LB 900, § 304.

**Cross References**

For qualifications of members of board of education, see section 79-543.  
Vacancies, see section 79-545.

**79-552 Class V school district; board of education; members; election by district; procedure; qualifications.**

The board of education of a Class V school district shall consist of twelve members until the fourth Monday after the date in 2013 of the election held pursuant to section 14-201 and shall consist of nine members thereafter. One member shall be elected from each district pursuant to section 32-545. Each elected member shall be a resident of the district for at least six months prior to the election. Each candidate for election to and each member of the board of education shall be a taxpayer in and a resident of the district of such school district as designated pursuant to section 32-552.

**Source:** Laws 1891, c. 45, § 5, p. 318; Laws 1909, c. 131, § 1, p. 476; R.S.1913, § 7011; Laws 1915, c. 125, § 1, p. 285; C.S.1922, § 6642; C.S.1929, § 79-2705; Laws 1939, c. 106, § 1, p. 470; C.S.Supp.,1941, § 79-2705; R.S.1943, § 79-2705; Laws 1949, c. 256, § 251, p. 775; Laws 1969, c. 259, § 68, p. 1000; Laws 1975, LB 423, § 1; Laws 1981, LB 446, § 31; Laws 1982, LB 440, § 5; Laws 1994, LB 76, § 604; R.S.1943, (1994), § 79-1003; Laws 1996, LB 900, § 305; Laws 2002, LB 935, § 17; Laws 2013, LB125, § 6.

**Cross References**

For qualifications of members of board of education, see section 79-543.

Vacancies, see section 79-545.

**79-553 Class VI school district; board of education; members; election.**

The governing body of each Class VI school district shall be a board consisting of a president, a vice president, a secretary, a treasurer, and two other voting members, to be elected as provided in section 32-546, and also may include one or more nonvoting student members selected pursuant to section 79-559.

**Source:** Laws 1901, c. 64, § 5, p. 442; R.S.1913, § 6806; Laws 1915, c. 118, § 1, p. 269; Laws 1917, c. 122, § 1, p. 299; C.S.1922, §§ 6377, 6378; C.S.1929, §§ 79-805, 79-806; R.S.1943, § 79-806; Laws 1949, c. 256, § 296, p. 790; Laws 1972, LB 661, § 86; Laws 1972, LB 1314, § 1; Laws 1973, LB 413, § 1; Laws 1981, LB 303, § 7; Laws 1982, LB 440, § 6; Laws 1989, LB 499, § 1; Laws 1991, LB 511, § 56; Laws 1992, LB 245, § 61; Laws 1994, LB 76, § 605; R.S.1943, (1994), § 79-1103; Laws 1996, LB 900, § 306.

**Cross References**

For qualifications of members of board of education, see section 79-543.

Vacancies, see section 79-545.

(d) SCHOOL BOARD MEETINGS AND PROCEDURES

**79-554 Class I, II, III, or VI school district; school board; quorum; meetings; open to public.**

In all meetings of a school board of a Class I, II, III, or VI school district, a majority of the members shall constitute a quorum for the transaction of business. Regular meetings shall be held on or before the third Monday of every month. All meetings of the board shall be subject to the Open Meetings Act. Special meetings may be called by the president or any two members, but all

members shall have notice of the time and place of meeting. If a school district is participating in an approved unified system as provided in section 79-4,108, regular meetings of such district's school board shall be held at least twice during the school year.

**Source:** Laws 1881, c. 78, subdivision V, § 1, p. 352; Laws 1885, c. 79, § 1, p. 324; R.S.1913, § 6781; C.S.1922, § 6322; C.S.1929, § 79-501; R.S.1943, § 79-501; Laws 1949, c. 256, § 78, p. 719; Laws 1972, LB 1268, § 1; Laws 1973, LB 429, § 1; Laws 1980, LB 735, § 1; Laws 1988, LB 812, § 2; Laws 1990, LB 1109, § 1; Laws 1991, LB 689, § 1; Laws 1991, LB 836, § 32; R.S.1943, (1994), § 79-439; Laws 1996, LB 900, § 307; Laws 2003, LB 67, § 7; Laws 2004, LB 821, § 25.

**Cross References**

**Open Meetings Act**, see section 84-1407.

Action of majority, without notice to other member, is not binding. State ex rel. Hunter v. Peters, 4 Neb. 254 (1876).

**79-555 Class III school district; board of education; meetings; when held.**

The regular meetings of the board of education of a Class III school district shall be held as provided in section 79-554. Special meetings may be held as circumstances may demand, and all meetings of the board shall be open to the public.

**Source:** Laws 1881, c. 78, subdivision XIV, § 6, p. 379; R.S.1913, § 6953; C.S.1922, § 6587; C.S.1929, § 79-2506; R.S.1943, § 79-2508; Laws 1947, c. 291, § 1, p. 903; Laws 1949, c. 256, § 238, p. 770; Laws 1961, c. 402, § 2, p. 1218; Laws 1965, c. 525, § 1, p. 1656; Laws 1972, LB 1268, § 2; Laws 1982, LB 892, § 1; R.S.1943, (1994), § 79-805; Laws 1996, LB 900, § 308.

**79-556 Class I school district; annual school meeting; time; place; school year.**

The annual school meeting of each Class I school district shall be held at the schoolhouse, if there is one, or at some other suitable place within the district on or before the second Monday of August of each year. The officers elected as provided in sections 79-472 and 79-565 shall take possession of the office to which they have been elected at the first meeting of the board following its election, and the school year shall commence with that day.

**Source:** Laws 1881, c. 78, subdivision II, § 1, p. 338; Laws 1885, c. 79, § 1, p. 322; Laws 1889, c. 78, § 2, p. 542; R.S.1913, § 6730; Laws 1915, c. 115, § 1, p. 265; C.S.1922, § 6268; C.S.1929, § 79-201; R.S.1943, § 79-201; Laws 1949, c. 256, § 185, p. 752; Laws 1969, c. 723, § 1, p. 2753; Laws 1971, LB 292, § 15; Laws 1973, LB 430, § 1; Laws 1976, LB 757, § 1; Laws 1978, LB 874, § 3; R.S.1943, (1994), § 79-501; Laws 1996, LB 900, § 309; Laws 1999, LB 813, § 13; Laws 2005, LB 126, § 41; Referendum 2006, No. 422.

**Cross References**

**Fiscal year**, see section 79-1091.

The notice provisions of this section do not apply to a board of education meeting to approve general expenses such as a contract for architectural services. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

**79-557 Class I school districts; special school meetings; how called; notice; limitation upon transaction of business.**

Special meetings of Class I school districts may be called by the school board by majority vote, or by any one of the members of such board, on the written request of legal voters of the district equal in number to at least ten percent of those voting at the last general election for Governor in the district by giving the notice required in section 79-558. When so requested, the board or the member receiving such request shall call the meeting. In all notices of special meetings, the object of the meeting shall be stated and no business shall be transacted at such meetings except such as is mentioned in the call.

**Source:** Laws 1881, c. 78, subdivision II, § 2, p. 338; R.S.1913, § 6731; C.S.1922, § 6269; C.S.1929, § 79-902; R.S.1943, § 79-202; Laws 1949, c. 256, § 186, p. 752; Laws 1963, c. 487, § 1, p. 1558; R.S.1943, (1994), § 79-502; Laws 1996, LB 900, § 310; Laws 1999, LB 813, § 14.

Board of education had power to provide for bussing, but duty to do so was not imposed and mandamus not warranted. *Connot v. Monroe*, 193 Neb. 453, 227 N.W.2d 827 (1975).

Request for calling of special election was sufficient. *Richards v. McBride*, 160 Neb. 57, 68 N.W.2d 692 (1955).

In absence of notice, taxes for purchase of school building cannot be voted at annual meeting. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

**79-558 Class I school districts; annual or special meetings; notice; change of schoolhouse site; building, purchase, or lease of schoolhouse.**

All notices of annual or special meetings of Class I school districts shall state the day, hour, and place of meeting, which place shall be within the district, and shall be given at least five days previous to such meeting by posting copies of the notice in three public places within the district. No annual meeting shall be deemed illegal for want of such notice. No schoolhouse site shall be changed and no taxes shall be voted for building, purchase, or lease of a schoolhouse at any district meeting unless notices have been given of such meeting as provided in this section, including the fact that such subjects will be considered at such meeting.

**Source:** Laws 1881, c. 78, subdivision II, § 3, p. 338; Laws 1905, c. 130, § 1, p. 552; R.S.1913, § 6732; C.S.1922, § 6270; C.S.1929, § 79-203; R.S.1943, § 79-203; Laws 1949, c. 256, § 187, p. 753; R.S.1943, (1994), § 79-503; Laws 1996, LB 900, § 311; Laws 1999, LB 813, § 15.

Architectural fees are general expenses and are not expenses of buildings which must be submitted to the school district voters for approval. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

The authority to direct the purchase of a site for a schoolhouse or other school buildings in a class six district is reserved to the voters of the district. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

Regular annual meeting is not invalidated by failure of notice. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

Change of schoolhouse site cannot be made unless notice is given that subject will be considered at meeting. *State ex rel. Arterburn v. Cruise*, 111 Neb. 114, 196 N.W. 116 (1923).

Notice, calling meeting to select place for holding school, justifies adoption of resolution directing leasing of certain building. *Krull v. State ex rel. Furgason*, 59 Neb. 97, 80 N.W. 272 (1899).

**79-559 Class II, III, IV, or VI school district; school board or board of education; student member; term; qualifications.**

(1) The school board or board of education of any Class II, III, IV, or VI school district may include at least one nonvoting member who is a public high

school student from the district. If the board elects to include such a nonvoting student member, the student member shall serve for a term of one year, beginning on September 1, and shall be the student body or student council president, the senior class representative, or a representative elected from and by the entire student body, as designated by the voting members of the board.

(2) Any nonvoting student member of the board has the privilege of attending all open meetings of the board but shall be excluded from executive sessions.

**Source:** Laws 1982, LB 440, § 1; R.S.1943, (1994), § 79-547.02; Laws 1996, LB 900, § 312; Laws 2013, LB125, § 7.

**79-560 Class IV school district; board of education; meetings; open to public.**

The board of education of a Class IV school district shall hold one or more regular meetings each month, the time of which shall be fixed by the bylaws adopted by such board. Special meetings may be held as circumstances may demand. All meetings of the board shall be subject to the Open Meetings Act.

**Source:** Laws 1917, c. 225, § 6, p. 551; Laws 1921, c. 60, § 1, p. 243; C.S.1922, § 6615; C.S.1929, § 79-2606; R.S.1943, § 79-2606; Laws 1949, c. 256, § 210, p. 760; R.R.S.1943, § 79-523; Laws 1971, LB 450, § 2; Laws 1972, LB 1268, § 3; Laws 1990, LB 1109, § 2; R.S.1943, (1994), § 79-906; Laws 1996, LB 900, § 313; Laws 2004, LB 821, § 26.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**79-561 Class V school district; board of education; meetings; open to public.**

The regular meetings of the board of education of a Class V school district shall be held one or more times each month. Special meetings may be held as circumstances may demand at the call of the president of the board or on petition of a majority of the members of the board. All meetings of the board shall be subject to the Open Meetings Act.

**Source:** Laws 1891, c. 45, § 6, p. 319; R.S.1913, § 7012; C.S.1922, § 6643; C.S.1929, § 79-2706; R.S.1943, § 79-2706; Laws 1949, c. 256, § 252, p. 776; Laws 1972, LB 1268, § 4; Laws 1988, LB 812, § 3; Laws 1990, LB 1109, § 3; R.S.1943, (1994), § 79-1003.01; Laws 1996, LB 900, § 314; Laws 2004, LB 821, § 27.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**79-562 Class V school district; board of education; meetings; quorum; attendance, how compelled; absence; effect.**

A majority of all the members of a board of education of a Class V school district shall constitute a quorum, but a less number in attendance at any regular meeting shall have and a quorum at any special meeting may have power to compel the attendance of absent members in such manner and under such penalties as each board prescribes. The absence of any member from four consecutive regular meetings of the board, unless on account of sickness or by

consent of the board, shall vacate his or her position on the board. Such facts shall be passed upon by the board of education and spread upon its records.

**Source:** Laws 1891, c. 45, § 14, p. 322; R.S.1913, § 7013; C.S.1922, § 6644; C.S.1929, § 79-2707; R.S.1943, § 79-2707; Laws 1949, c. 256, § 253, p. 776; R.S.1943, (1994), § 79-1003.02; Laws 1996, LB 900, § 315.

**79-563 Class VI school district; school board; meetings.**

Regular meetings of the school board of a Class VI school district shall be held on or before the third Monday of each month, but special meetings may be held from time to time as circumstances may demand. All meetings of the board shall be open to the public unless otherwise specially ordered.

**Source:** Laws 1973, LB 412, § 1; R.S.1943, (1994), § 79-1111; Laws 1996, LB 900, § 316; Laws 2001, LB 797, § 14.

(e) SCHOOL BOARD OFFICERS

**79-564 Class II or III school district; school board; officers; elect.**

At the first meeting of each school board or board of education elected in a Class II or III school district, and annually thereafter, the board shall elect from among its members a president and vice president. The board shall also elect a secretary who need not be a member of the board. If the secretary is a member of the board, an assistant secretary may be named and his or her duties and compensation set by the board.

**Source:** Laws 1969, c. 257, § 39, p. 953; Laws 1973, LB 557, § 9; R.S.1943, (1994), § 79-516.06; Laws 1996, LB 900, § 317.

**79-565 Class I school district; school district officers; enumeration; election; term.**

(1) The legal voters of every new Class I school district, when assembled pursuant to legal notice, shall elect by ballot from the legal voters of such district a president for a term of three years, a secretary for a term of two years, and a treasurer for a term of one year. At the next annual school meeting of the district and regularly thereafter, their successors shall be elected for terms of three years each. All officers elected shall hold their offices until their successors are elected or appointed and qualified.

(2) Officers of existing organized Class I districts, as referred to in subsection (1) of this section, shall continue and discharge the duties of their offices until the expiration of their terms. Their successors shall be elected for terms of three years.

(3) In any Class I district which is not within any city or village containing one hundred fifty or more children who are five through twenty years of age, candidates for the school board shall be nominated by petition of at least twenty-five legal voters of the district, which petition shall be filed with the secretary of the school board not less than fifteen days prior to the date of the annual school meeting. Legal voters at such meeting and election may cast their ballots, written or printed, between the hours of 12 noon and 8 p.m. of such date. Each year two members shall be elected for terms of three years and until their successors have been elected and qualified. The terms of members of

the school board in such a district shall begin on the second Monday of September, and on such date the members of the board shall elect a president, a treasurer, and a secretary from their own number. Each such officer shall serve for a term of one year or until his or her successor is elected and qualified.

(4) The president, secretary, and treasurer of a district referred to in subsection (3) of this section shall (a) conduct the election or cause the election to be conducted and (b) record the names and residences of persons voting and seal, preserve, and deliver the ballots to be publicly opened and canvassed as the first order of business at the convening of the annual meeting at 8 p.m. of such day.

(5) Elections conducted pursuant to this section shall come under the jurisdiction of the Secretary of State to decide disputed points of law as provided in section 32-201.

**Source:** Laws 1881, c. 78, subdivision III, § 1, p. 343; R.S.1913, § 6752; C.S.1922, § 6293; C.S.1929, § 79-301; R.S.1943, § 79-301; Laws 1949, c. 256, § 228, p. 765; Laws 1953, c. 301, § 1, p. 1013; Laws 1957, c. 351, § 1, p. 1196; Laws 1959, c. 402, § 1, p. 1362; Laws 1979, LB 129, § 1; Laws 1990, LB 1090, § 14; R.S.1943, (1994), § 79-601; Laws 1996, LB 900, § 318; Laws 1997, LB 345, § 24; Laws 2003, LB 67, § 8.

#### Cross References

For qualifications of members of board of education, see section 79-543.

Vacancies, see section 79-545.

Under former statute, there was no statutory provision authorizing the establishment of a high school in a district organized under article 3. *Griggs v. School District No. 76 of Wayne County*, 152 Neb. 282, 40 N.W.2d 859 (1950).

Although school district had its own treasurer, county treasurer was legal custodian of sinking funds. *School District No. 22 of Harlan County v. Harlan County*, 127 Neb. 4, 254 N.W. 701 (1934).

### **79-566 Class IV school district; board of education; officers; employees, selection.**

The board of education of a Class IV school district shall at a regular meeting elect from outside its own members a superintendent, an associate superintendent of instruction, an associate superintendent of business affairs, a school district treasurer, and the number of employees the board of education may deem necessary for the proper conduct of the affairs of the school district at such salaries as the board of education may determine. The board may contract with them for terms not to exceed three years. The election of all officers of the board of education and all elections for filling vacancies on the board of education shall be by ballot. No person shall be declared elected unless he or she receives the vote of a majority of all the members of the board of education.

**Source:** Laws 1917, c. 225, § 8, p. 552; C.S.1922, § 6617; Laws 1929, c. 94, § 4, p. 354; C.S.1929, § 79-2608; Laws 1937, c. 182, § 5, p. 717; C.S.Supp.,1941, § 79-2608; R.S.1943, § 79-2608; Laws 1949, c. 269, § 1, p. 883; Laws 1949, c. 256, § 212, p. 760; Laws 1969, c. 257, § 40, p. 953; R.S.1943, (1971), § 79-525; Laws 1971, LB 450, § 4; Laws 1986, LB 84, § 1; R.S.1943, (1994), § 79-908; Laws 1996, LB 900, § 319.

### **79-567 Class V school district; board of education; officers and employees; selection; terms.**

The members of the board of education of a Class V school district, at their regular meeting in January each year, shall elect a president and vice president from their own members, who shall serve for terms of one year or until their successors are elected and qualified. The members of the board of education may also select from outside their own members one superintendent of public schools, one secretary, one treasurer, and such other officers as the board may deem necessary for the administration of the affairs of the school district, at such salary as the board may deem just, and in their discretion they may enter into contracts with such officers for terms of not to exceed three years. The board shall have the power to elect its president and vice president and to select its officers and employees in accordance with rules adopted by the board.

**Source:** Laws 1891, c. 45, § 8, p. 319; Laws 1905, c. 142, § 1, p. 579; R.S.1913, § 7016; C.S.1922, § 6647; Laws 1929, c. 94, § 5, p. 354; C.S.1929, § 79-2710; Laws 1937, c. 182, § 6, p. 718; C.S.Supp.,1941, § 79-2710; R.S.1943, § 79-2710; Laws 1949, c. 271, § 2, p. 888; Laws 1949, c. 256, § 256, p. 777; Laws 1990, LB 1090, § 18; Laws 1996, LB 604, § 8; R.S.1943, (1994), § 79-1004; Laws 1996, LB 900, § 320.

**79-568 Class VI school district; board of education; officers.**

The board of education of a Class VI school district shall elect from its members a president, a vice president, a secretary, and a treasurer at the first regular board meeting after the newly elected board members have been sworn in and prior to conducting any other business.

**Source:** Laws 1996, LB 900, § 321.

**79-569 Class I, II, III, IV, or VI school district; president; powers and duties.**

The president of the school board of a Class I, II, III, IV, or VI school district shall: (1) Preside at all meetings of the district; (2) countersign all orders upon the treasury for money to be disbursed by the district and all warrants of the secretary on the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer; (3) administer the oath to the secretary and treasurer of the district when such an oath is required by law in the transaction of the business of the district; and (4) perform such other duties as may be required by law of the president of the board. He or she is entitled to vote on any issue that may come before any meeting. If the president of the school board of a Class I school district is absent from any district meeting, the legal voters present may elect a suitable person to preside at the meeting.

**Source:** Laws 1881, c. 78, subdivision IV, § 1, p. 345; Laws 1901, c. 63, § 5, p. 439; Laws 1909, c. 120, § 1, p. 460; R.S.1913, § 6763; C.S.1922, § 6304; C.S.1929, § 79-401; R.S.1943, § 79-401; Laws 1949, c. 256, § 91, p. 723; R.S.1943, (1994), § 79-452; Laws 1996, LB 900, § 322; Laws 1997, LB 345, § 25; Laws 1999, LB 272, § 76; Laws 2009, LB549, § 21.

**Cross References**

**For form of oath,** see sections 11-101 and 11-101.01.

It is duty of president to countersign all warrants. Fulk v. School District No. 8 of Lancaster County, 155 Neb. 630, 53 N.W.2d 56 (1952).

School district warrant not countersigned by the moderator is not a valid instrument. Pollock v. Consolidated School District No. 65 of Perkins County, 138 Neb. 315, 293 N.W. 108 (1940).

**79-570 Class I, II, III, IV, or VI school district; president; meetings; maintenance of order.**

If at any district meeting of a Class I, II, III, IV, or VI school district any person conducts himself or herself in a disorderly manner and persists in such conduct after notice by the president or person presiding, the president or person presiding may order such person to withdraw from the meeting and, if the person refuses, may order any person or persons to take such person into custody until the meeting is adjourned.

**Source:** Laws 1881, c. 78, subdivision IV, § 2, p. 345; R.S.1913, § 6764; C.S.1922, § 6305; C.S.1929, § 79-402; R.S.1943, § 79-402; Laws 1949, c. 256, § 92, p. 724; Laws 1988, LB 1030, § 51; R.S.1943, (1994), § 79-453; Laws 1996, LB 900, § 323.

**79-571 Class I, II, III, IV, or VI school district; meetings; disorderly conduct; penalty.**

Any person who refuses to withdraw from such meeting on being so ordered as provided in section 79-570 or who willfully disturbs such meeting shall be guilty of a Class V misdemeanor.

**Source:** Laws 1881, c. 78, subdivision IV, § 3, p. 346; R.S.1913, § 6765; C.S.1922, § 6306; C.S.1929, § 79-403; R.S.1943, § 79-403; Laws 1949, c. 256, § 93, p. 724; Laws 1977, LB 39, § 249; R.S.1943, (1994), § 79-454; Laws 1996, LB 900, § 324.

**79-572 Class I, II, III, IV, or VI school district; president; actions for or against district; appearance required.**

The president of a Class I, II, III, IV, or VI school district shall appear for and on behalf of the district in all suits brought by or against the district.

**Source:** Laws 1881, c. 78, subdivision IV, § 7, p. 347; R.S.1913, § 6769; C.S.1922, § 6310; C.S.1929, § 79-407; R.S.1943, § 79-407; Laws 1949, c. 256, § 94, p. 724; R.S.1943, (1994), § 79-455; Laws 1996, LB 900, § 325.

Members of school board act in a representative capacity and not as individuals. Greer v. Chelewski, 162 Neb. 450, 76 N.W.2d 438 (1956).

General duties of officers, when district is involved in litigation, require them to look after interest of district. Bishop v. Fuller, 78 Neb. 259, 110 N.W. 715 (1907).

Under former law, treasurer must bring action in name of district. Donnelly v. Duras, 11 Neb. 283, 9 N.W. 45 (1881).

Under former law, when action was not brought by treasurer, petition should state cause. Bowen v. School Dist. No. 3 of Phelps County, 10 Neb. 265, 4 N.W. 981 (1880).

**79-573 Class V school district; school board; president; duties.**

The president of the school board of a Class V school district shall preside at all meetings of the board, appoint all committees when appointment is not otherwise provided for, and sign all warrants ordered by the board to be drawn upon the treasurer of the school district for school money.

**Source:** Laws 1891, c. 45, § 9, p. 320; R.S.1913, § 7017; C.S.1922, § 6648; C.S.1929, § 79-2711; R.S.1943, § 79-2712; Laws 1949, c. 256, § 257, p. 777; R.S.1943, (1994), § 79-1004.01; Laws 1996, LB 900, § 326; Laws 2001, LB 797, § 15.

**79-574 Class V school district; school elections; notice; duty of president to give.**

For at least ten days prior to an election in a Class V school district, the president of the board of education shall publish his or her proclamation to the legal voters of the school district in at least one daily newspaper of general circulation in the school district, setting forth the time when and place or places where such election will be held and a full and complete statement of the officers, bond proposition, or question of expenditure to be voted on at the election.

**Source:** Laws 1891, c. 45, § 29(1), p. 328; R.S.1913, § 7036; C.S.1922, § 6667; C.S.1929, § 79-2730; R.S.1943, § 79-2734; Laws 1949, c. 256, § 269, p. 782; R.S.1943, (1994), § 79-1007.05; Laws 1996, LB 900, § 327; Laws 1997, LB 345, § 26.

#### **79-575 Secretary; disbursements; how made.**

The secretary of a school district shall draw and sign all orders upon the treasurer for all money to be disbursed by the district and all warrants upon the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer and shall present the same to the president to be countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be issued until so countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be countersigned by the president until the amount for which it is drawn is written upon its face. Facsimile signatures of board members may be used, and a person or persons delegated by the board may sign and validate all warrants, checks, and other instruments drawn upon bank depository funds of the district.

**Source:** Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1883, c. 72, § 8, p. 292; R.S.1913, § 6778; C.S.1922, § 6319; C.S.1929, § 79-416; R.S.1943, § 79-418; Laws 1949, c. 256, § 89, p. 722; Laws 1955, c. 315, § 6, p. 976; Laws 1980, LB 734, § 1; R.S. 1943, (1994), § 79-450; Laws 1996, LB 900, § 328; Laws 1999, LB 272, § 77; Laws 2009, LB392, § 9.

District warrants do not possess qualities of negotiable instruments. State ex rel. Brandeis & Sons v. Melcher, 87 Neb. 359, 127 N.W. 241 (1910).

Mandamus will lie to compel moderator to sign orders. Montgomery v. State ex rel. Thompson, 35 Neb. 655, 53 N.W. 568 (1892).

Endorsee takes subject to equities. School Dist. No. 2 of Dixon County v. Stough, 4 Neb. 357 (1876).

Demand on treasurer should be accompanied by proper order. State ex rel. McMillan v. Hodge, 4 Neb. 265 (1876).

#### **79-576 Class I, II, III, IV, or VI school district; secretary; duty as clerk of board.**

The secretary of a Class I, II, III, IV, or VI school district shall be clerk of the school board and of all district meetings when present, but if he or she is not present the legal voters may appoint a clerk for the time being, who shall certify the proceedings to the clerk to be recorded by him or her.

**Source:** Laws 1881, c. 78, subdivision IV, § 9, p. 348; R.S.1913, § 6771; C.S.1922, § 6312; C.S.1929, § 79-409; R.S.1943, § 79-409; Laws 1949, c. 256, § 95, p. 724; Laws 1996, LB 604, § 6; R.S.1943, (1994), § 79-456; Laws 1996, LB 900, § 329; Laws 1997, LB 345, § 27.

Secretary is the clerk of the district board. George v. School Dist. No. 24 of Red Willow County, 157 Neb. 791, 61 N.W.2d 401 (1953).

Under former law, action of school board on expulsion of pupil was not impaired notwithstanding director kept no formal

record of meeting. *Smith v. Johnson*, 105 Neb. 61, 178 N.W. 835 (1920).

**79-577 Class I, II, III, IV, or VI school district; secretary; books, records, and reports; duty to preserve.**

The secretary of a Class I, II, III, IV, or VI school district shall (1) record all proceedings of the district in a book furnished by the district to be kept for that purpose, (2) preserve copies of all reports, and (3) safely preserve and keep all books and papers belonging to the office.

**Source:** Laws 1881, c. 78, subdivision IV, § 10, p. 348; R.S.1913, § 6772; C.S.1922, § 6313; C.S.1929, § 79-410; R.S.1943, § 79-410; Laws 1949, c. 256, § 96, p. 724; R.S.1943, (1994), § 79-457; Laws 1996, LB 900, § 330; Laws 1999, LB 272, § 78.

Secretary is custodian of records. *George v. School Dist. No. 24 of Red Willow County*, 157 Neb. 791, 61 N.W.2d 401 (1953). Record is best evidence of what district has done. *Burlington & M. R.R. Co. v. Lancaster County*, 4 Neb. 293 (1876).

**79-578 Class I, II, III, IV, or VI school district; secretary; school census; duty to take; time allowed.**

The secretary of a Class I, II, III, IV, or VI school district shall take, or cause to be taken by some person appointed for the purpose by a majority vote of the school board, the census of the school district and then make or cause to be made a list in writing of the names of all the children belonging to such district, from birth through twenty years of age, together with the names of all the taxpayers in the district. A copy of the list, verified by oath of the person taking such census or by affidavit appended to or endorsed on the list, setting forth that it is a correct list of the names of all children belonging in the district from birth through twenty years of age and that it reflects such information as of June 30, shall be maintained as provided in section 79-524.

**Source:** Laws 1881, c. 78, subdivision IV, § 12, p. 349; Laws 1889, c. 78, § 10, p. 546; R.S.1913, § 6774; C.S.1922, § 6315; C.S.1929, § 79-412; Laws 1931, c. 139, § 1, p. 385; C.S.Supp.,1941, § 79-412; R.S.1943, § 79-412; Laws 1949, c. 256, § 97, p. 724; Laws 1955, c. 315, § 7, p. 977; Laws 1957, c. 346, § 1, p. 1189; Laws 1967, c. 534, § 1, p. 1769; Laws 1976, LB 587, § 1; Laws 1978, LB 874, § 2; Laws 1990, LB 1090, § 7; Laws 1991, LB 511, § 36; Laws 1992, LB 245, § 41; R.S.1943, (1994), § 79-458; Laws 1996, LB 900, § 331; Laws 1999, LB 272, § 79.

Courts will take judicial notice of census. *Kokes v. State ex rel. Koupal*, 55 Neb. 691, 76 N.W. 467 (1898). Record is best evidence on question of enumeration. *State ex rel. Vale v. School Dist. of City of Superior*, 55 Neb. 317, 75 N.W. 855 (1898).

**79-579 Class I, II, III, IV, or VI school district; district officers; disputes over orders; county attorney; duty to investigate; mandamus.**

Whenever a secretary or president of the school board of a Class I, II, III, IV, or VI school district refuses to sign orders on the treasurer or the treasurer thinks best to refuse the payment of orders drawn upon him or her, the difficulty shall be referred for adjudication to the county attorney, who shall proceed at once to investigate the matter. If the county attorney finds that the officer complained of refuses through contumacy or for insufficient reasons, the

county attorney, on behalf of the district, shall apply to the proper court for a writ of mandamus to compel the officer to perform his or her duty.

**Source:** Laws 1881, c. 78, subdivision III, § 11, p. 345; R.S.1913, § 6762; C.S.1922, § 6303; C.S.1929, § 79-311; R.S.1943, § 79-311; Laws 1949, c. 256, § 106, p. 727; R.S.1943, (1994), § 79-467; Laws 1996, LB 900, § 332; Laws 1999, LB 272, § 80.

Section is valid. *Leonard v. State ex rel. Tressler*, 67 Neb. 635, 93 N.W. 988 (1903); *Montgomery v. State ex rel. Thompson*, 35 Neb. 655, 53 N.W. 568 (1892).

Superintendent's right to bring mandamus is not exclusive. *State ex rel. Cook v. Bloom*, 19 Neb. 562, 27 N.W. 638 (1886).

Mandamus lies to compel performance of duty as directed by electors. *Maier v. State ex rel. Allen & Jenkins*, 32 Neb. 354, 49 N.W. 436 (1891).

**79-580 Class I, II, III, and VI school district; board of education; claims against; record of proceedings; secretary; duty to publish.**

The secretary of the school board or board of education of each Class I, II, III, and VI school district having an annual budget of one hundred thousand dollars or more shall, within ten days after any regular or special meeting of the board, publish one time in a legal newspaper published in or of general circulation in such district a list of the claims, arising on contract or tort, allowed at the meeting. The list shall set forth the name of the claimant and the amount and nature of the claim allowed, to consist of not more than ten words in stating the nature of each such claim. The secretary shall likewise cause to be published a concise summary of all other proceedings of such meetings. Publication of such claims or proceedings in a legal newspaper shall not be required unless the publication can be done at an expense not exceeding the rates provided by law for the publication of proceedings of county boards.

**Source:** Laws 1972, LB 1255, § 1; R.S.1943, (1994), § 79-552; Laws 1996, LB 900, § 333.

Salaries of school district employees are not "claims" within the meaning of this section and are not required to be published individually. *State ex rel. Thompson v. Alderman*, 230 Neb. 335, 431 N.W.2d 625 (1988).

publication of the individual salaries of the employees of the district. Employees did not make any demand for payment of their salaries; no school board action was necessary; no board action was taken; and no publication was necessary. *State ex rel. Thompson v. Alderman*, 230 Neb. 335, 431 N.W.2d 625 (1988).

This section, requiring the publication of claims allowed by school boards of Class III school districts, does not require the

**79-581 Class I, II, III, or VI school district; publication of claims and summary of proceedings; noncompliance by secretary; penalty.**

The secretary of any school board or board of education of a Class I, II, III, or VI school district failing or neglecting to comply with the provisions of section 79-580 shall be guilty of a Class V misdemeanor. In the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect.

**Source:** Laws 1947, c. 274, § 2, p. 879; R.S.Supp.,1947, § 79-604.02; Laws 1949, c. 256, § 198, p. 755; Laws 1977, LB 39, § 254; R.S.Supp.,1980, § 79-514; R.S.1943, (1994), § 79-703.01; Laws 1996, LB 900, § 334; Laws 1997, LB 347, § 17.

**79-582 Class IV school district; secretary of the board of education; duties.**

The secretary of the board of education of a Class IV school district shall (1) be present at all meetings of the board of education, (2) keep an accurate

journal of its proceedings, and (3) perform all other duties the board of education may require.

**Source:** Laws 1917, c. 225, § 11, p. 552; C.S.1922, § 6620; C.S.1929, § 79-2611; R.S.1943, § 79-2611; Laws 1949, c. 269, § 2, p. 884; Laws 1949, c. 256, § 213, p. 761; R.S.1943, (1971), § 79-526; Laws 1971, LB 450, § 5; Laws 1986, LB 84, § 2; R.S.1943, (1994), § 79-909; Laws 1996, LB 900, § 335.

**79-583 Class V school district; school board; secretary; oath; bond; duties.**

The secretary of the school board of a Class V school district shall be present at all meetings of the board, keep an accurate journal of the proceedings, take charge of its books and documents, countersign all warrants for school money drawn upon the treasurer of the school district by order of the board, and perform all other duties the board may require. Before entering into the discharge of his or her duties the secretary of the board shall give bond in the sum of not less than ten thousand dollars, with good and sufficient sureties, and shall take and subscribe an oath or affirmation before a proper officer that he or she will support the Constitution of Nebraska and faithfully perform the duties of his or her office.

**Source:** Laws 1891, c. 45, § 11, p. 320; R.S.1913, § 7019; C.S.1922, § 6650; C.S.1929, § 79-2713; R.S.1943, § 79-2714; Laws 1949, c. 256, § 259, p. 778; Laws 1951, c. 284, § 1, p. 950; R.S.1943, (1994), § 79-1004.03; Laws 1996, LB 900, § 336; Laws 2001, LB 797, § 16.

**79-584 Class V school district; board of education; disbursements; how made; accounts; audit.**

All accounts of a Class V school district shall be audited by the secretary of the board of education and approved by a committee to be named the committee on claims. No expenditures greater than one thousand dollars shall be voted by the board, except in accordance with the provisions of a written contract, and no money shall be appropriated out of the school fund except on a recorded affirmative vote of a majority of all the members of the board. All money belonging to the school district in the hands of the county treasurer shall be accounted for and disbursed directly to the board of education in accordance with section 23-1601.

**Source:** Laws 1891, c. 45, § 15, p. 322; Laws 1903, c. 97, § 1, p. 555; R.S.1913, § 7021; C.S.1922, § 6652; C.S.1929, § 79-2715; R.S. 1943, § 79-2716; Laws 1949, c. 271, § 3, p. 889; Laws 1949, c. 256, § 262, p. 779; Laws 1996, LB 604, § 10; R.S.1943, (1994), § 79-1005; Laws 1996, LB 900, § 337.

**79-585 Class VI school district; board of education; assistant secretary; compensation.**

The school board in a Class VI school district shall select an assistant secretary, who shall not be a member of the board, at a salary to be fixed by the board.

**Source:** Laws 1949, c. 256, § 298, p. 792; R.S.1943, (1994), § 79-1104; Laws 1996, LB 900, § 338.

**79-586 Class I, II, III, IV, or VI school district; treasurer; bond or insurance; filing; failure to give; effect.**

The treasurer of each Class I, II, III, IV, or VI school district shall, within ten days after his or her election, execute to the county and file with the secretary a bond or evidence of equivalent insurance coverage of not less than five hundred dollars in any instance and not more than double the amount of money, as nearly as can be ascertained, to come into his or her hands as treasurer at any one time, which bond shall be signed by either a personal surety or a surety company or companies of recognized responsibility as surety or sureties, to be approved by the president and secretary, conditioned for the faithful discharge of the duties of the office. The bond when approved or evidence of equivalent insurance coverage shall be filed by the secretary in the office of the county treasurer of the county in which the school district is situated. If the treasurer fails to execute such bond or provide evidence of such insurance coverage, the office shall be declared vacant by the school board or board of education and the board shall immediately appoint a treasurer who shall be subject to the same conditions and possess the same powers as if elected to that office. The treasurer shall have no power or authority to withdraw or disburse the money of the district prior to filing the bond or evidence of equivalent insurance coverage provided for in this section.

**Source:** Laws 1881, c. 78, subdivision IV, § 4, p. 346; Laws 1883, c. 72, § 6, p. 291; R.S.1913, § 6766; C.S.1922, § 6307; C.S.1929, § 79-404; R.S.1943, § 79-404; Laws 1949, c. 256, § 98, p. 725; Laws 1959, c. 392, § 1, p. 1348; Laws 1975, LB 103, § 2; R.S.1943, (1994), § 79-459; Laws 1996, LB 900, § 339; Laws 2005, LB 380, § 1.

Treasurer is required to give bond for faithful performance of duties. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

School district treasurer, under his bond, is required to pay over to successor money in his hands. *Thurston County v. Chmelka*, 138 Neb. 696, 294 N.W. 857 (1940).

By this section, intent of Legislature to require bond of all school district treasurers is shown. *School District of Omaha v. Adams*, 151 Neb. 741, 39 N.W.2d 550 (1949).

**79-587 Class I, II, III, IV, or VI school district; treasurer; district funds; receipt and disbursement.**

The treasurer of each Class I, II, III, IV, or VI school district shall apply for and receive from the county treasurer all school money apportioned to or collected for the district by the county treasurer, upon order of the secretary countersigned by the president. The treasurer shall pay out all money received by him or her, on the order of the secretary countersigned by the president of such district.

**Source:** Laws 1881, c. 78, subdivision IV, § 5, p. 346; R.S.1913, § 6767; C.S.1922, § 6308; C.S.1929, § 79-405; R.S.1943, § 79-405; Laws 1949, c. 256, § 99, p. 725; R.S.1943, (1994), § 79-460; Laws 1996, LB 900, § 340.

It is function of treasurer to pay out funds on order of secretary countersigned by president. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

trustee. *Lincoln Nat. Bank & Trust Co. v. School District No. 79 of Boyd County*, 124 Neb. 538, 247 N.W. 433 (1933).

It is the duty of treasurer to pay over upon order all money received. *State ex rel. Sorensen v. Bank of Otoe*, 125 Neb. 414, 250 N.W. 547 (1933).

Mandamus lies to compel performance of duty by district treasurers. *Leonard v. State ex rel. Tressler*, 67 Neb. 635, 93 N.W. 988 (1903).

Bank receiving deposit of funds of school district treasurer, who is also active managing officer of bank, holds such funds as

Bank receiving deposit by treasurer becomes trustee for district. *State v. Midland State Bank*, 52 Neb. 1, 71 N.W. 1011 (1897).

Warrant must be properly drawn and countersigned. *Montgomery v. State ex rel. Thompson*, 35 Neb. 655, 53 N.W. 568 (1892); *Donnelly v. Duras*, 11 Neb. 283, 9 N.W. 45 (1881).

District cannot release treasurer from liability for money lost or misapplied. *Ward v. School Dist. No. 15 of Colfax County*, 10 Neb. 293, 4 N.W. 1001 (1880).

**79-588 Class I, II, III, IV, or VI school district; treasurer; records and reports required; delivery upon expiration of office.**

The treasurer of a Class I, II, III, IV, or VI school district shall keep a record in which the treasurer shall enter all the money received and disbursed by him or her, specifying particularly (1) the source from which money has been received, (2) to what fund it belongs, and (3) the person or persons to whom and the object for which the same has been paid out. The treasurer shall present to the district, at each annual meeting, a report in writing containing a statement of all money received during the preceding year and of the disbursement made with the items of such disbursements and exhibit the vouchers therefor. At the close of the treasurer's term of office, he or she shall settle with the school board and shall hand over to his or her successor the records and all receipts, vouchers, orders, and papers coming into his or her hands as treasurer of the district, together with all money remaining in his or her hands as such treasurer.

**Source:** Laws 1881, c. 78, subdivision IV, § 6, p. 347; R.S.1913, § 6768; C.S.1922, § 6309; C.S.1929, § 79-406; R.S.1943, § 79-406; Laws 1949, c. 256, § 100, p. 726; R.S.1943, (1994), § 79-461; Laws 1996, LB 900, § 341; Laws 1999, LB 272, § 81.

School district treasurer is bound to faithfully discharge duties of his office and to pay over to his successor the money in his hands which has not been otherwise legally disbursed.

*Thurston County v. Chmelka*, 138 Neb. 696, 294 N.W. 857 (1940).

**79-589 Board of education; Class III school district outside of city or village or more than one-half of district within a city of metropolitan class; treasurer; bond or insurance; duties.**

In a Class III school district which lies outside of the corporate limits of any city or village or of which more than one-half is geographically within a city of the metropolitan class, the board of education shall elect one of its members, other than the secretary, as treasurer of the school district and the provisions of section 79-590 shall not apply to the selection of a treasurer of such a district. The treasurer shall prepare and submit in writing a monthly report of the state of the finances of the district and pay school money only upon warrants signed by the president of the board or, in the president's absence, by the vice president, and countersigned by the secretary. The treasurer shall give a bond or evidence of equivalent insurance coverage payable to the school district in such sum as may be fixed by the board. Such bond shall be signed by one or more surety companies of recognized responsibility. The cost of such bond or insurance coverage shall be paid by the school district.

**Source:** Laws 1953, c. 303, § 4, p. 1017; Laws 1973, LB 408, § 1; R.S.1943, (1994), § 79-803.05; Laws 1996, LB 900, § 342; Laws 2005, LB 380, § 2.

**79-590 Class III school district; board of education; treasurer; duties; bond or insurance; compensation.**

The board of education of a Class III school district may employ a treasurer for such district who shall be paid a salary, to be fixed by the board, of not to exceed one thousand two hundred dollars per annum. If the board does not

employ such a treasurer, the city treasurer or deputy city treasurer of the city which is within such district shall be ex officio treasurer of the school district. He or she shall attend all meetings of the board when required so to do, prepare and submit in writing a monthly report of the state of the district's finances, and pay school money only upon warrants signed by the president of the board or, in the president's absence, by the vice president, and countersigned by the secretary. If the city treasurer or his or her deputy acts as ex officio treasurer of the school district, he or she shall be paid for such services by the school district a sum to be fixed by the board. The treasurer of such district, or the city treasurer or deputy city treasurer acting as ex officio treasurer, shall give a bond or evidence of equivalent insurance coverage payable to the county in such sum as may be fixed by the board of education. Such bond shall be signed by one or more surety companies of recognized responsibility. The cost of such bond or insurance coverage shall be paid by the school district.

**Source:** Laws 1881, c. 78, subdivision XIV, § 13, p. 381; Laws 1883, c. 72, § 22, p. 299; Laws 1899, c. 59, § 4, p. 287; R.S.1913, § 6960; C.S.1922, § 6594; C.S.1929, § 79-2513; R.S.1943, § 79-2515; Laws 1949, c. 256, § 242, p. 771; Laws 1953, c. 305, § 1, p. 1020; Laws 1963, c. 488, § 1, p. 1559; R.S.1943, (1994), § 79-809; Laws 1996, LB 900, § 343; Laws 2005, LB 380, § 3.

**Cross References**

For applicability of this section to certain Class III school districts, see section 79-589.

**79-591 Class IV school district; treasurer; duties; reports; bond or insurance.**

The treasurer of a Class IV school district shall (1) attend all meetings of the board of education when required to do so by the board of education, (2) prepare and submit in writing a monthly report of the state of the finances of the district, (3) pay out school money only upon warrants signed by the president or vice president and countersigned by the associate superintendent of business affairs, and (4) give a bond or evidence of equivalent insurance coverage payable to the school district in a sum fixed by the board of education.

**Source:** Laws 1917, c. 225, § 13, p. 553; C.S.1922, § 6622; C.S.1929, § 79-2613; R.S.1943, § 79-2613; Laws 1949, c. 269, § 4, p. 885; Laws 1949, c. 256, § 215, p. 761; R.S.1943, (1971), § 79-528; Laws 1971, LB 450, § 7; Laws 1986, LB 84, § 4; R.S.1943, (1994), § 79-911; Laws 1996, LB 900, § 344; Laws 2005, LB 380, § 4.

**79-592 Class V school district; treasurer; bond or insurance; duties.**

The treasurer of a Class V school district shall receive all taxes of the school district from the county treasurer. The treasurer of the school district shall attend all meetings of the board of education of the Class V district when required to do so, shall prepare and submit in writing a monthly report of the state of the district's finances, and shall pay school money either upon a warrant signed by the president, or in the president's absence by the vice president, and countersigned by the secretary or upon a check or other instrument drawn upon bank depository funds of the school district. The treasurer shall also perform such other duties as designated by the board of education. Before entering into the discharge of his or her duties and during

the entire time he or she so serves, the treasurer shall give bond or evidence of equivalent insurance coverage payable to the board in such amount as may be required by the board, but in no event less than two hundred thousand dollars, conditioned for the faithful discharge of his or her duties as treasurer of the school district, for the safekeeping and proper disbursement of all funds and money of the school district received by the treasurer. Such bond shall be signed by one or more surety companies of recognized responsibility, to be approved by the board. The cost of the bond or insurance shall be paid by the school district. Such bond or insurance coverage may be enlarged at any time the board may deem an enlargement or additional bond or insurance coverage to be necessary.

**Source:** Laws 1891, c. 45, § 12, p. 321; Laws 1903, c. 96, § 1, p. 553; R.S.1913, § 7020; C.S.1922, § 6651; C.S.1929, § 79-2714; R.S. 1943, § 79-2715; Laws 1947, c. 297, § 1, p. 912; Laws 1949, c. 256, § 260, p. 778; Laws 1996, LB 604, § 9; R.S.1943, (1994), § 79-1004.04; Laws 1996, LB 900, § 345; Laws 2005, LB 380, § 5; Laws 2009, LB392, § 10.

The 1947 amendment to this section was operative prospectively only. *School District of Omaha v. Adams*, 151 Neb. 741, 39 N.W.2d 550 (1949).

#### **79-593 Class V school district; board of education; vice president; duties.**

The vice president of the board of education of a Class V school district shall perform all the duties of the president in case of the president's absence or disability.

**Source:** Laws 1891, c. 45, § 10, p. 320; R.S.1913, § 7018; C.S.1922, § 6649; C.S.1929, § 79-2712; R.S.1943, § 79-2713; Laws 1949, c. 256, § 258, p. 778; R.S.1943, (1994), § 79-1004.02; Laws 1996, LB 900, § 346.

#### **79-594 Class II, III, IV, or VI school district; superintendent; appointment; salary; term.**

The school board in a Class II, III, IV, or VI school district may also elect at any regular meeting one superintendent of public instruction with such salary as the board deems best and may enter into contract with him or her at its discretion, for a term not to exceed three years.

**Source:** Laws 1881, c. 78, § 8, p. 379; Laws 1883, c. 72, § 20, p. 298; Laws 1899, c. 66, § 1, p. 295; Laws 1903, c. 93, § 1, p. 546; R.S.1913, § 6955; C.S.1922, § 6589; Laws 1929, c. 94, § 3, p. 353; C.S.1929, § 79-2508; Laws 1937, c. 182, § 4, p. 716; C.S.Supp.,1941, § 79-2508; R.S.1943, § 79-2519; Laws 1949, c. 256, § 206, p. 758; R.S.1943, (1994), § 79-519; Laws 1996, LB 900, § 347; Laws 1997, LB 345, § 28.

#### **Cross References**

**Class V school district**, appointment of superintendent, see section 79-567.

#### **79-595 Class IV school district; associate superintendent of business affairs; duties.**

The associate superintendent of business affairs of a Class IV school district shall (1) take charge of the books and documents of the board of education, (2)

countersign all warrants for school money, (3) apply for and receive school funds from the county treasurer or other persons to whom such funds are payable by law and deposit the funds with the treasurer of the board, and (4) perform all such other duties as the board may require.

**Source:** Laws 1996, LB 900, § 348.

**79-596 Class IV school district; associate superintendent of business affairs; bond.**

Before entering upon his or her duties, the associate superintendent of business affairs of a Class IV school district shall give a bond payable to the school district in such sum as the board of education may fix, but not less than five thousand dollars, and shall take and subscribe the usual oath of office. The board of education may require any other officer or employee to give a bond in such an amount as it may deem necessary. The cost of all bonds shall be paid by the school district and shall be approved by the board of education.

**Source:** Laws 1917, c. 225, § 12, p. 553; C.S.1922, § 6621; C.S.1929, § 79-2612; R.S.1943, § 79-2612; Laws 1949, c. 269, § 3, p. 884; Laws 1949, c. 256, § 214, p. 761; R.S.1943, (1971), § 79-527; Laws 1971, LB 450, § 6; Laws 1986, LB 84, § 3; R.S.1943, (1994), § 79-910; Laws 1996, LB 900, § 349.

**79-597 Class IV school district; accounts; audit; disbursements; how made.**

All accounts of a Class IV school district shall be audited by the associate superintendent of business affairs, approved by the chairperson of the board of education, and countersigned by one other member of the board of education. No expenditure greater than one thousand dollars shall be voted by the board of education except in accordance with the provisions of a written contract. No money shall be appropriated out of school funds except on a recorded affirmative vote of a majority of all the members of the board of education.

**Source:** Laws 1917, c. 225, § 15, p. 553; Laws 1921, c. 60, § 2, p. 243; C.S.1922, § 6624; C.S.1929, § 79-2615; R.S.1943, § 79-2615; Laws 1949, c. 269, § 5, p. 885; Laws 1949, c. 256, § 216, p. 761; R.S.1943, (1971), § 79-529; Laws 1971, LB 450, § 8; Laws 1986, LB 84, § 5; R.S.1943, (1994), § 79-912; Laws 1996, LB 900, § 350.

(f) PROVIDING EDUCATION OUTSIDE THE DISTRICT

**79-598 Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.**

(1) The school board of any public school district in this state, when authorized by a majority of the votes cast at any annual or special meeting, shall (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(2) The school board of any public school district may also, when petitioned to do so by at least two-thirds of the parents residing in the district having children of school age who will attend school under the contract plan, (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(3) The contract price for instruction referred to in subsections (1) and (2) of this section shall be the cost per pupil for the immediately preceding school year or the current year, whichever appears more practical as determined by the board of the district which accepts the pupils for instruction. The cost per pupil shall be determined by dividing the sum of the operational cost and debt service expense of the accepting district, except retirement of debt principal, plus three percent of the insurable or present value of the school plant and equipment of the accepting district, by the average daily membership of pupils in the accepting district. Payment of the contract price shall be made in equal installments at the beginning of the first and second semesters.

(4) All the contracts referred to in subsections (1) and (2) of this section shall be in writing, and copies of all such contracts shall be filed in the office of the superintendent of the primary high school district on or before August 15 of each year. School districts thus providing instruction for their children in neighboring districts shall be considered as maintaining a school as required by law. The teacher of the school providing the instruction shall keep a separate record of the attendance of all pupils from the first named district and make a separate report to the secretary of that district. The board of every sending district contracting under this section shall enter into contracts with school districts of the choice of the parents of the children to be educated under the contract plan. Any school district failing to comply with this section shall not be paid any funds from the state apportionment of school funds while such violation continues.

(5) The State Committee for the Reorganization of School Districts may dissolve any district (a) failing to comply with this section, (b) in which the votes cast at an annual or special election on the question of contracting with a neighboring district are evenly divided, or (c) in which the governing body of the district is evenly divided in its vote on the question of contracting pursuant to subsection (2) of this section. The state committee shall dissolve and attach to a neighboring district or districts any school district which, for two consecutive years, contracts for the instruction of its pupils, except that when such dissolution will create extreme hardships on the pupils or the district affected, the State Board of Education may, on application by the school board of the district, waive the requirements of this subsection. The dissolution of any school district pursuant to this section shall be effected in the manner prescribed in section 79-498.

**Source:** Laws 1897, c. 64, § 1, p. 311; R.S.1913, § 6944; C.S.1922, § 6526; C.S.1929, § 79-2103; R.S.1943, § 79-2112; Laws 1945, c. 212, § 1, p. 625; Laws 1947, c. 287, § 1, p. 896; Laws 1949, c. 256, § 124, p. 733; Laws 1951, c. 280, § 1, p. 944; Laws 1953, c. 291, § 5, p. 990; Laws 1953, c. 298, § 2, p. 1006; Laws 1955, c. 313, § 1, p. 966; Laws 1955, c. 314, § 1, p. 968; Laws 1955, c.

315, § 8, p. 977; Laws 1959, c. 393, § 1, p. 1349; Laws 1959, c. 386, § 2, p. 1337; Laws 1961, c. 401, § 1, p. 1215; Laws 1965, c. 521, § 1, p. 1647; Laws 1967, c. 535, § 1, p. 1770; Laws 1967, c. 536, § 1, p. 1773; Laws 1969, c. 709, § 3, p. 2724; Laws 1971, LB 292, § 10; Laws 1989, LB 30, § 4; Laws 1989, LB 487, § 4; R.S.1943, (1994), § 79-486; Laws 1996, LB 900, § 351; Laws 1999, LB 272, § 82; Laws 2003, LB 67, § 9; Laws 2009, LB549, § 22.

#### Cross References

**Contract for instruction relative to certain mergers and dissolutions**, see section 79-470.

**Depopulated districts**, provisions for contracting, see section 79-499.

**Expense of opposing dissolution order under this section**, see section 79-471.

Board of education had power to provide for busing, but duty to do so was not imposed and mandamus not warranted. *Connot v. Monroe*, 193 Neb. 453, 227 N.W.2d 827 (1975).

School district cannot be dissolved hereunder until full fifth year instruction as contracted for has elapsed. *Nelson v. Robertson*, 187 Neb. 192, 188 N.W.2d 720 (1971).

Funds received and expended by the high school districts from state and federal aid are, until the Legislature otherwise decrees, part of the per pupil cost. *Werth v. Buffalo County Board of Equalization*, 187 Neb. 119, 188 N.W.2d 442 (1971).

This section permits computation of per pupil cost and is intended to avoid a flat rate which might be more or less than compensatory for nonresident student tuition. *Mann v. Wayne County Board of Equalization*, 186 Neb. 752, 186 N.W.2d 729 (1971).

Where school has not yet been held in district for more than five years, district may be dissolved. *Board of Education v. Winne*, 177 Neb. 431, 129 N.W.2d 255 (1964).

The waiver of the requirements of subsection (4) of this section is required to be made by the State Board of Education. *Bierman v. Campbell*, 175 Neb. 877, 124 N.W.2d 918 (1963).

Requirement of favorable vote is a condition precedent to establishment of contract. *Farrell v. School Dist. No. 54 of Lincoln County*, 164 Neb. 853, 84 N.W.2d 126 (1957).

Contracts for instruction between districts must be in writing. *George v. School Dist. No. 24 of Red Willow County*, 157 Neb. 791, 61 N.W.2d 401 (1953).

Construed in connection with Blanket Mill Tax Levy Act. *Peterson v. Hancock*, 155 Neb. 801, 54 N.W.2d 85 (1952).

Authorization by a majority of the votes cast at an annual or special election is necessary to require school board to make provision for transportation. *Bender v. Palmer*, 154 Neb. 350, 48 N.W.2d 65 (1951).

### **79-599 Pupil; attend school in adjoining state; application; contents.**

In counties which are contiguous to the boundary line of this state, the parent or legal guardian of any pupil authorized or required to attend any of grades kindergarten through twelve may apply for authority for such pupil to attend school in a district in an adjoining state. Such application shall be made on or before August 15 of each year to the school board or board of education of the school district in which the parent or guardian resides and shall specify the district in the adjoining state to which the parent or guardian seeks to send the pupil. The application also shall state whether any of the following conditions exists: (1) The pupil lives nearer an attendance center in the proposed receiving district than in the district of residence; (2) natural barriers such as rivers cause transportation difficulties within the district of residence; (3) road conditions from the pupil's home to the school in the proposed receiving district are better than to the school in the district of residence; (4) travel time would be less to the school in the proposed receiving district; or (5) educational advantages for the pupil exist in the proposed receiving district.

**Source:** Laws 1971, LB 469, § 1; R.S.1943, (1994), § 79-4,106.01; Laws 1996, LB 900, § 352.

### **79-5,100 Pupil; attend school in adjoining state; application; procedure; authorization, when.**

Upon receipt of an application pursuant to section 79-599, the school board or board of education shall inquire of the proposed receiving district if it is willing to receive the pupil. If the proposed receiving district is willing to do so,

the school which the pupil would attend is accredited, and the conditions of section 79-5,101 have been met, the board may authorize such attendance.

**Source:** Laws 1971, LB 469, § 2; R.S.1943, (1994), § 79-4,106.02; Laws 1996, LB 900, § 353.

**79-5,101 Pupil; attend school in adjoining state; reciprocity required.**

No application for attendance of a pupil in a school of another state pursuant to sections 79-599 to 79-5,103 shall be approved unless such state has in force an act which the State Board of Education determines to be similar to such sections.

**Source:** Laws 1971, LB 469, § 3; R.S.1943, (1994), § 79-4,106.03; Laws 1996, LB 900, § 354.

**79-5,102 Pupil; attend school in adjoining state; tuition; payment by sending district.**

When any school board or board of education authorizes attendance at a school in an adjoining state pursuant to sections 79-599 to 79-5,103, the sending district shall pay to the receiving district tuition for each pupil for each day the pupil is actually enrolled in the receiving district up to one hundred eighty-five days per year. The daily rate of tuition shall be equal to the amount of the actual per pupil per day operating expense of the receiving district for the preceding school year.

**Source:** Laws 1971, LB 469, § 4; R.S.1943, (1994), § 79-4,106.04; Laws 1996, LB 900, § 355.

**79-5,103 Pupil; attend school in adjoining state; records; costs; determination.**

The State Board of Education shall have access to the records of the receiving district in an adjoining state in order to verify the amount charged by the receiving district, and the state board of education of an adjoining state sending students to a district in this state shall have similar access to the records of a receiving district in this state. When necessary, the Commissioner of Education shall confer with the head of the department of education of an adjoining state to establish uniform methods of determining costs pursuant to sections 79-599 to 79-5,103. The Commissioner of Education also may prescribe forms to be used for applications pursuant to section 79-599 and shall assist school boards and boards of education in carrying out the provisions of sections 79-599 to 79-5,103.

**Source:** Laws 1971, LB 469, § 5; R.S.1943, (1994), § 79-4,106.05; Laws 1996, LB 900, § 356.

**79-5,104 Class II or III school district; tuition of pupil attending school outside of district; payment, when.**

The school board or board of education of any Class II or III school district may, in its discretion, pay the regular school tuition for any pupil residing in such school district and attending a school outside such school district when, in

the opinion of the board, the best interests of the pupil or the school district may so require.

**Source:** Laws 1955, c. 317, § 1, p. 982; R.S.1943, (1994), § 79-516.01; Laws 1996, LB 900, § 357.

**79-5,105 Class III, IV, or V school district; children residing on federal property; contracts with federal government for instruction; supervisory services of districts; maintenance and operation of schools.**

If the board of education of a Class III, IV, or V school district finds it desirable that children of school age or any grade or grades thereof residing on federal property situated in the vicinity of a city of the metropolitan class be given instruction outside the boundaries of such district of the character provided by law for children within the district, under the direction and control of the board of education and that the same is not detrimental to the interests of the school district, the board of education may enter into a contract with the federal government or any agency thereof to provide supervisory services in the construction of school facilities and to maintain and operate schools for the children of residents of such federal installations.

**Source:** Laws 1957, c. 350, § 1, p. 1194; R.S.1943, (1994), § 79-544; Laws 1996, LB 900, § 358.

**79-5,106 Class III, IV, or V school district; children residing on federal property; contracts with federal government for instruction; effect of existing available facilities.**

The provisions of giving instructions outside a Class III, IV, or V school district as provided in section 79-5,105 shall not apply where existing facilities are now available.

**Source:** Laws 1957, c. 350, § 2, p. 1195; R.S.1943, (1994), § 79-545; Laws 1996, LB 900, § 359.

**79-5,107 Class II or VI school district; board of education; student's attendance at accredited junior, junior-senior, or senior high school; payment of tuition.**

The board of education of any Class VI school district formerly organized as a rural high school district or the school board of any Class II district may pay tuition based on the actual per pupil cost of the receiving district for any junior high, junior-senior high, or senior high school pupil residing in the district to attend an accredited junior high, junior-senior high, or senior high school outside such district when such facilities are located closer to the residence of the pupil than the school maintained by such district and when in the opinion of the board the best interest of such pupil or such school district may so require.

**Source:** Laws 1953, c. 319, § 1, p. 1052; Laws 1955, c. 322, § 1, p. 997; Laws 1967, c. 548, § 1, p. 1812; R.S.Supp.,1967, § 79-1103.04; Laws 1969, c. 725, § 1, p. 2759; R.S.1943, (1994), § 79-550; Laws 1996, LB 900, § 360.

**79-5,108 Board of education of Class VI school district; student's attendance at accredited high school outside of state; payment of tuition; when; appeal.**

(1) When the parent or guardian of a student subject to the provisions of this section applies in writing, the board of education of any Class VI school district maintaining an accredited high school may pay the regular high school tuition or such portion thereof as may be agreed upon by the respective governing bodies for any student residing in such school district and attending a school district outside this state when such high school outside this state is located at least ten miles closer to the place of residence of such student than the school maintained by such Class VI school district and when, in the opinion of the board of education, the best interest of such student or such Class VI school district may so require.

(2) Any parent or guardian of such student who is aggrieved by a decision of the board of education may appeal such decision to the State Board of Education, the decision of which shall be binding.

**Source:** Laws 1969, c. 711, § 2, p. 2735; Laws 1976, LB 920, § 1; Laws 1981, LB 165, § 1; Laws 1991, LB 207, § 2; Laws 1992, Third Spec. Sess., LB 19, § 1; R.S.1943, (1994), § 79-1103.05; Laws 1996, LB 900, § 361.

The State Board of Education hearing appeals under this section acts in a quasi-judicial capacity and, therefore, either party may appeal its decision to the District Court, either by

writ of error or under the terms of Neb. Rev. Stat. section 84-917 (Reissue 1976). *Richardson v. Board of Education*, 206 Neb. 18, 290 N.W.2d 803 (1980).

## ARTICLE 6

### SCHOOL TRANSPORTATION

#### Section

- 79-601. Pupils; public or private schools; transportation; buses; conditions; purchase; use; State Department of Education; duties.
- 79-602. Pupil transportation vehicles; inspections; correction of defects.
- 79-603. Pupil transportation vehicles; safety features; violations; penalty.
- 79-604. Pupils; transportation; buses; routes, posting with signs.
- 79-605. Nonresident pupils; transportation; schedule of fees; applicability of section.
- 79-606. Sale of school bus; alteration required; violation; penalty.
- 79-607. Pupil transportation vehicles; State Board of Education; rules and regulations; violations; penalty.
- 79-608. Students; transportation; buses; operator; requirements; violation; penalty.
- 79-609. Pupils; transportation; buses; capacity; instruction in safe riding practice; emergency evacuation drills; occupant protection system; operator wear.
- 79-610. Pupils; transportation; driver; liability policy; conditions.
- 79-611. Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.
- 79-612. Pupils; transportation allowance; claims; contents; limitation upon action for recovery.
- 79-613. Pupils; transportation allowance; temporary residence; attendance at another school; how computed.

**79-601 Pupils; public or private schools; transportation; buses; conditions; purchase; use; State Department of Education; duties.**

The school board or board of education of any public school district may, when authorized by a majority vote of the members of such board, purchase out of the general fund of the district a school bus or buses for the purpose of providing transportation facilities for school children to and from school and to and from all school-related activities. The school board or board of education of any public school district providing such transportation facilities for children attending public schools shall also provide transportation without cost for

children who attend nonprofit private schools which are approved for continued legal operation under rules and regulations established by the State Board of Education pursuant to subdivision (5)(c) of section 79-318. Such transportation shall be provided for only such children attending nonprofit private schools who reside in a district which provides transportation to public school students, and such transportation shall extend only from some point on the regular public school route nearest or most easily accessible to their homes to and from a point on the regular public school route nearest or most easily accessible to the school or schools attended by such children. The governing body of such nonprofit private school, on a form to be provided by the State Department of Education, shall certify to the public school district the names, addresses, and days of school attendance of children transported and such other information useful in operating the transportation facility as may be required by rules established by the State Board of Education. Transportation shall be provided for nonprofit private school children only at times when transportation is being provided for public school children.

The school board or board of education of any public school district may enter into a contract with a municipality or county pursuant to section 13-1208.

**Source:** Laws 1947, c. 301, § 2, p. 918; R.S.Supp.,1947, § 79-2113.02; Laws 1949, c. 256, § 125, p. 734; Laws 1965, c. 522, § 1, p. 1650; Laws 1975, LB 522, § 1; Laws 1981, LB 85, § 3; R.S.1943, (1994), § 79-487; Laws 1996, LB 900, § 362.

The provisions of this section which allow the transportation of nonprofit private school students on public school buses do not violate Neb. Const. Art. VII, § 11; Neb. Const. Art. III, § 18; U.S. Const. amend. XIV, § 1; or U.S. Const. amend. I. State ex rel. Bouc v. School Dist. of City of Lincoln, 211 Neb. 731, 320 N.W.2d 472 (1982).

This section imposes no duty on school boards to provide actual bus service to students. Warren v. Papillion School Dist. No. 27, 199 Neb. 410, 259 N.W.2d 281 (1977).

Board of education had power to provide for busing, but duty to do so was not imposed and mandamus not warranted. Connot v. Monroe, 193 Neb. 453, 227 N.W.2d 827 (1975).

### **79-602 Pupil transportation vehicles; inspections; correction of defects.**

All school boards, the governing authorities of any nonpublic schools in this state, and all independent contractors who or which provide student transportation services for such boards and governing authorities and for military installations shall cause all pupil transportation vehicles used for the transportation of students to be inspected before school opens in the fall and each eighty days during that part of the year when school is in session by a motor vehicle mechanic appointed by the board or governing authority having jurisdiction over such students, except that any pupil transportation vehicle that has been inspected under rules and regulations of the Public Service Commission shall be exempted from the provisions of this section. The mechanic shall thoroughly inspect every vehicle used for the transportation of students as to brakes, lights, windshield wipers, window glass, tires, doors, heaters, defrosting equipment, steering gear, exhaust system, and the mechanical condition of every part of such pupil transportation vehicle to ensure compliance with the minimum allowable safety criteria established pursuant to section 79-607 and subdivision (12) of section 79-318. Within five days after such inspection, the mechanic shall make a report of his or her inspection in writing on regular forms provided by the State Department of Education which shall show if the vehicle met the minimum allowable safety criteria for use. Any item not meeting such criteria shall be brought into compliance prior to the vehicle being used to

transport students. One copy of the mechanic's report shall be filed with the board or governing authority and, if the school contracts with an independent contractor to provide transportation services, one copy with the independent contractor. The chief administrative officer of each school district shall annually certify, by a written verification statement, to the State Department of Education that the inspections required pursuant to this section have been performed. Such verification statement shall be sent to the department no later than June 30.

In addition to the inspection requirements prescribed in this section, the driver of each pupil transportation vehicle shall make daily inspections of such vehicle to ensure that all lights and equipment are fully operational or repaired before his or her daily route. Reports of such daily inspections shall be kept by the driver in the vehicle and filed weekly with the head mechanic or administrator in charge of the transportation system. If the inspection reveals any significant defect in the lights or equipment, the driver shall immediately report the defect to the head mechanic or administrator in charge of the transportation system.

**Source:** Laws 1947, c. 304, § 1, p. 922; R.S.Supp.,1947, § 79-2113.03; Laws 1949, c. 256, § 126, p. 734; Laws 1959, c. 394, § 1, p. 1352; Laws 1965, c. 523, § 1, p. 1651; Laws 1971, LB 292, § 11; Laws 1973, LB 358, § 1; Laws 1977, LB 39, § 250; Laws 1980, LB 743, § 2; Laws 1982, LB 933, § 1; Laws 1987, LB 538, § 3; Laws 1994, LB 1310, § 4; R.S.1943, (1994), § 79-488; Laws 1996, LB 900, § 363; Laws 1999, LB 813, § 16; Laws 2001, LB 36, § 1; Laws 2003, LB 67, § 10; Laws 2013, LB222, § 33.

#### Cross References

**Motor carrier regulations**, scope of, see section 75-303.

**Penalty for violation of section**, see section 79-603.

**Registration fees**, see section 60-3,144.

**Safety glass required**, see section 60-6,263.

### **79-603 Pupil transportation vehicles; safety features; violations; penalty.**

Any person who violates any provision of section 79-602 or who drives, moves, or causes or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to the safety features provided in such section for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

For purposes of this section, highway shall have the meaning provided in section 60-624.

**Source:** Laws 1993, LB 370, § 479; R.S.1943, (1994), § 79-488.01; Laws 1996, LB 900, § 364.

### **79-604 Pupils; transportation; buses; routes, posting with signs.**

The Department of Roads shall post on state highways signs reading: Unlawful to pass school buses stopped to load or unload children. These signs shall be adequate in size and number to properly inform the public. School districts may obtain and post such signs on other bus route roads upon the approval of

appropriate county officials. The Department of Roads may furnish such signs at cost to school districts.

**Source:** Laws 1959, c. 396, § 2, p. 1355; R.S.1943, (1994), § 79-488.03; Laws 1996, LB 900, § 365.

**79-605 Nonresident pupils; transportation; schedule of fees; applicability of section.**

Except as otherwise provided in this section, any school board may authorize the use of buses belonging to the school district for the transportation of school children residing outside such district. A fee sufficient to pay the additional costs of such transportation shall be charged each person so transported. The board shall prepare a schedule of all such fees charged, and a copy of such schedule shall be filed in the office of the superintendent of the primary high school district. This section shall not apply to an agreement for transportation entered into pursuant to section 79-241.

**Source:** Laws 1959, c. 394, § 2, p. 1352; Laws 1991, LB 207, § 1; Laws 1993, LB 348, § 20; R.S.1943, (1994), § 79-488.04; Laws 1996, LB 900, § 366; Laws 1999, LB 272, § 83.

**Cross References**

Public Elementary and Secondary Student Fee Authorization Act, see section 79-2,125.

**79-606 Sale of school bus; alteration required; violation; penalty.**

When any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for transportation of students is sold and used for any other purpose than for transportation of students, such vehicle shall be painted a distinct color other than that prescribed by the State Board of Education and the stop arms and system of alternately flashing warning signal lights on such vehicle shall be removed. It shall be the purchaser's responsibility to see that the modifications required by this section are made. Any person violating this section shall be guilty of a Class V misdemeanor and, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars.

**Source:** Laws 1963, c. 459, § 1, p. 1487; Laws 1971, LB 292, § 12; Laws 1974, LB 863, § 10; Laws 1981, LB 316, § 2; Laws 1988, LB 1142, § 5; R.S.1943, (1994), § 79-488.05; Laws 1996, LB 900, § 367; Laws 2009, LB549, § 23.

**79-607 Pupil transportation vehicles; State Board of Education; rules and regulations; violations; penalty.**

The State Board of Education shall adopt and promulgate rules and regulations for operators of pupil transportation vehicles as to physical and mental qualities, driving skills and practices, and knowledge of traffic laws, rules, and regulations which relate to school bus transportation. Such traffic rules and regulations shall by reference be made a part of any such contract with a school district. Any officer or employee of any school district who violates any of the traffic rules or regulations or fails to include obligations to comply with the traffic rules and regulations in any contract executed by him or her on behalf of a school district shall be guilty of a Class V misdemeanor and shall, upon conviction thereof, be subject to removal from office or employment. Any person operating a school bus under contract with a school district who fails to

comply with any of such traffic rules and regulations shall be guilty of breach of contract, and such contract shall be canceled after notice and hearing by the responsible officers of such school district.

**Source:** Laws 1996, LB 900, § 368.

A school bus driver's contract is valid and enforceable if he complies with the statutory requirements before operating a bus, notwithstanding a failure to fully comply before the con-

tract was entered into. *Rase v. Southeast Nebraska Consol. School Dist.*, 190 Neb. 800, 212 N.W.2d 629 (1973).

**79-608 Students; transportation; buses; operator; requirements; violation; penalty.**

(1) Any person, before operating a school bus, including any school bus which transports students by direct contract with the students or their parents and not owned by or under contract with the school district or nonpublic school, shall submit himself or herself to (a) an examination, to be conducted by a driver's license examiner of the Department of Motor Vehicles, to determine his or her qualifications to operate such bus and (b) an examination by a licensed physician to determine whether or not he or she meets the physical and mental standards established pursuant to section 79-607 and shall furnish to the school board or board of education or the governing authority of a nonpublic school and to the Director of Motor Vehicles a written report of each such examination on standard forms prescribed by the State Department of Education, signed by the person conducting the same, showing that he or she is qualified to operate a school bus and that he or she meets the physical and mental standards. If the Director of Motor Vehicles determines that the person is so qualified and meets such standards, the director shall issue to the person a special school bus operator's permit, which shall expire each year on the date of birth of the holder, in such form as the director prescribes. No contract shall be entered into until such permit has been received and exhibited to the school board or the governing authority of a nonpublic school. The holder of such permit shall have it on his or her person at all times while operating a school bus.

(2) It shall be unlawful for any person operating a school bus to be or remain on duty for a longer period than sixteen consecutive hours. When any person operating a bus has been continuously on duty for sixteen hours, he or she shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such operator, who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

(3) Any person violating this section shall be guilty of a Class V misdemeanor. His or her contract with the school district shall be canceled as provided in section 79-607.

**Source:** Laws 1963, c. 460, § 1, p. 1488; Laws 1965, c. 523, § 3, p. 1653; Laws 1971, LB 292, § 13; Laws 1973, LB 358, § 2; Laws 1977, LB 39, § 251; Laws 1989, LB 285, § 142; Laws 1990, LB 980, § 35; R.S.1943, (1994), § 79-488.06; Laws 1996, LB 900, § 369; Laws 2009, LB549, § 24.

A school bus driver's contract is valid and enforceable if he complies with the statutory requirements before operating a bus, notwithstanding a failure to fully comply before the con-

tract was entered into. *Rase v. Southeast Nebraska Consol. School Dist.*, 190 Neb. 800, 212 N.W.2d 629 (1973).

**79-609 Pupils; transportation; buses; capacity; instruction in safe riding practice; emergency evacuation drills; occupant protection system; operator wear.**

(1) The school board or board of education, after consultation with a member of the Nebraska State Patrol, shall determine the number of passengers that may be safely transported in each bus.

(2)(a) Any company or agency that provides transportation of pupils by school bus and contracts directly with the pupils or their parents, (b) the school board or board of education of the public schools, and (c) the governing authority of any private, denominational, or parochial school in this state shall provide, at least twice during each school year to each pupil who is transported in a school bus, instruction in safe riding practice and participation in emergency evacuation drills.

(3) The operator of a school bus equipped with an occupant protection system as defined in section 60-6,265 shall wear such system whenever the vehicle is in motion.

**Source:** Laws 1965, c. 523, § 2, p. 1652; Laws 1974, LB 863, § 11; Laws 1992, LB 958, § 11; Laws 1993, LB 370, § 480; R.S.1943, (1994), § 79-488.07; Laws 1996, LB 900, § 370.

**79-610 Pupils; transportation; driver; liability policy; conditions.**

When a school board or board of education employs a driver to transport the pupils from their homes to the school and return and to and from other school-sponsored activities by any means, the board shall purchase a liability insurance policy in a limit of not less than fifty thousand dollars to cover the bodily injuries of one person, one hundred thousand dollars to cover bodily injuries to more than one person in the same accident, and ten thousand dollars to cover property damage, the premium on which shall be paid out of the school district treasury. Such policy shall be conditioned for the payment of any and all damages on account of bodily injury or death, or injury to or destruction of property that may accrue to any person or persons by reason of any negligence or carelessness in transporting pupils from their homes to school and return and to and from other school-sponsored activities. Such policy may, in the discretion of the board, contain a deductible provision for up to one thousand dollars of any claim, in which event the school district shall be considered a self-insurer for that amount.

**Source:** Laws 1939, c. 111, § 1, p. 482; C.S.Supp.,1941, § 79-2102; R.S.1943, § 79-2111; Laws 1949, c. 256, § 127, p. 735; Laws 1951, c. 281, § 1, p. 946; Laws 1969, c. 138, § 26, p. 637; R.S.1943, (1994), § 79-489; Laws 1996, LB 900, § 371.

**Cross References**

For relationship to Political Subdivisions Tort Claims Act, see section 13-901 et seq.

**79-611 Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.**

(1) The school board of any school district shall provide free transportation, partially provide free transportation, or pay an allowance for transportation in lieu of free transportation as follows:

(a) When a student attends an elementary school in his or her own district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(b) When a student is required to attend an elementary school outside of his or her own district and lives more than four miles from such elementary school as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(c) When a student attends a secondary school in his or her own Class II or Class III school district and lives more than four miles from the public schoolhouse as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence. This subdivision does not apply when one or more Class I school districts merge with a Class VI school district to form a new Class II or III school district on or after January 1, 1997; and

(d) When a student, other than a student in grades ten through twelve in a Class V district, attends an elementary or junior high school in his or her own Class V district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence.

(2)(a) The school board of any school district that is a member of a learning community shall provide free transportation for a student who resides in such learning community and attends school in such school district if (i) the student is transferring pursuant to the open enrollment provisions of section 79-2110, qualifies for free or reduced-price lunches, lives more than one mile from the school to which he or she transfers, and is not otherwise disqualified under subdivision (2)(c) of this section, (ii) the student is transferring pursuant to the open enrollment provisions of section 79-2110, is a student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends, lives more than one mile from the school to which he or she transfers, and is not otherwise disqualified under subdivision (2)(c) of this section, (iii) the student is attending a focus school or program and lives more than one mile from the school building housing the focus school or program, or (iv) the student is attending a magnet school or program and lives more than one mile from the magnet school or the school housing the magnet program.

(b) For purposes of this subsection, student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends has the definition found in section 79-2110. This subsection does not prohibit a school district that is a member of a learning community from providing transportation to any intradistrict student.

(c) For any student who resides within a learning community and transfers to another school building pursuant to the open enrollment provisions of section 79-2110 and who had not been accepted for open enrollment into any school building within such district prior to September 6, 2013, the school board is exempt from the requirement of subdivision (2)(a) of this section if (i) the student is transferring to another school building within his or her home school district or (ii) the student is transferring to a school building in a school district that does not share a common border with his or her home school district.

(3) The transportation allowance which may be paid to the parent, custodial parent, or guardian of students qualifying for free transportation pursuant to

subsection (1) or (2) of this section shall equal two hundred eighty-five percent of the mileage rate provided in section 81-1176, multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the schoolhouse exceeds three miles. Such transportation allowance does not apply to students residing in a learning community who qualify for free or reduced-price lunches.

(4) Whenever students from more than one family travel to school in the same vehicle, the transportation allowance prescribed in subsection (3) of this section shall be payable as follows:

(a) To the parent, custodial parent, or guardian providing transportation for students from other families, one hundred percent of the amount prescribed in subsection (3) of this section for the transportation of students of such parent's, custodial parent's, or guardian's own family and an additional five percent for students of each other family not to exceed a maximum of one hundred twenty-five percent of the amount determined pursuant to subsection (3) of this section; and

(b) To the parent, custodial parent, or guardian not providing transportation for students of other families, two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, from the residence of the student to the pick-up point at which students transfer to the vehicle of a parent, custodial parent, or guardian described in subdivision (a) of this subsection.

(5) When a student who qualifies under the mileage requirements of subsection (1) of this section lives more than three miles from the location where the student must be picked up and dropped off in order to access school-provided free transportation, as measured by the shortest route that must actually and necessarily be traveled by motor vehicle between his or her residence and such location, such school-provided transportation shall be deemed partially provided free transportation. School districts partially providing free transportation shall pay an allowance to the student's parent or guardian equal to two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the location where the student must be picked up and dropped off exceeds three miles.

(6) The board may authorize school-provided transportation to any student who does not qualify under the mileage requirements of subsection (1) of this section and may charge a fee to the parent or guardian of the student for such service. An affiliated high school district may provide free transportation or pay the allowance described in this section for high school students residing in an affiliated Class I district. No transportation payments shall be made to a family for mileage not actually traveled by such family. The number of days the student has attended school shall be reported monthly by the teacher to the board of such public school district.

(7) No more than one allowance shall be made to a family irrespective of the number of students in a family being transported to school. If a family resides in a Class I district which is part of a Class VI district and has students enrolled in any of the grades offered by the Class I district and in any of the non-high-school grades offered by the Class VI district, such family shall receive not more than one allowance for the distance actually traveled when both districts

are on the same direct travel route with one district being located a greater distance from the residence than the other. In such cases, the travel allowance shall be prorated among the school districts involved.

(8) No student shall be exempt from school attendance on account of distance from the public schoolhouse.

**Source:** Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1907; Laws 1949, c. 256, § 128, p. 735; Laws 1951, c. 276, § 6, p. 930; Laws 1955, c. 315, § 9, p. 979; Laws 1963, c. 483, § 1, p. 1553; Laws 1969, c. 717, § 1, p. 2743; Laws 1969, c. 718, § 1, p. 2744; Laws 1969, c. 719, § 1, p. 2746; Laws 1976, LB 852, § 1; Laws 1977, LB 117, § 1; Laws 1977, LB 33, § 10; Laws 1979, LB 425, § 1; Laws 1980, LB 867, § 2; Laws 1981, LB 204, § 156; Laws 1981, LB 316, § 3; Laws 1986, LB 419, § 1; Laws 1987, LB 200, § 1; Laws 1990, LB 259, § 22; Laws 1990, LB 1059, § 38; Laws 1993, LB 348, § 21; Laws 1994, LB 1311, § 1; R.S.1943, (1994), § 79-490; Laws 1996, LB 900, § 372; Laws 1997, LB 710, § 4; Laws 1997, LB 806, § 28; Laws 1999, LB 272, § 84; Laws 2003, LB 394, § 7; Laws 2005, LB 126, § 42; Laws 2006, LB 1024, § 56; Referendum 2006, No. 422; Laws 2007, LB641, § 10; Laws 2008, LB1154, § 8; Laws 2009, LB549, § 25; Laws 2013, LB410, § 8; Laws 2013, LB585, § 2.

#### Cross References

For definitions relating to affiliation of school districts, see section 79-4,101.

Subsection (4) of this section grants affiliated school districts the authority to provide free transportation to high school students residing in an affiliated Class I district, but neither creates any mandatory legal duty nor provides for the enforcement of any duty. "May" in subsection (4) is to be interpreted as discretionary. Subsection (1) of this section provides that a school district must provide either free transportation or reimbursement at the statutory rate to high school students residing within that district. State ex rel. Fick v. Miller, 255 Neb. 387, 584 N.W.2d 809 (1998).

Implicit in this section is a school board's authority to provide free transportation to students if it chooses. School Dist. of Waterloo v. Hutchinson, 244 Neb. 665, 508 N.W.2d 832 (1993).

Section constitutional and not in violation of equal protection clause. Warren v. Papillion School Dist. No. 27, 199 Neb. 410, 259 N.W.2d 281 (1977).

Transportation allowance will be provided if child attending school resides more than specified distance from school. Galstan v. School Dist. of Omaha, 177 Neb. 319, 128 N.W.2d 790 (1964).

This section does not apply to the transportation of a physically handicapped child to a special school outside of school district. Schutte v. Decker, 164 Neb. 582, 83 N.W.2d 69 (1957).

Claim for transportation allowance must be filed monthly. George v. School Dist. No. 24 of Red Willow County, 157 Neb. 791, 61 N.W.2d 401 (1953).

In absence of authorization by electors to require transportation, school board can pay mileage. Bender v. Palmer, 154 Neb. 350, 48 N.W.2d 65 (1951).

This section does not control allowance for transportation when school board closes school. Batterman v. Bronderslev, 150 Neb. 875, 36 N.W.2d 284 (1949).

### 79-612 Pupils; transportation allowance; claims; contents; limitation upon action for recovery.

All claims for transportation allowance under section 79-611 shall be filed for payment monthly. No action for recovery on any claim for transportation allowance filed with the secretary of the school board or board of education shall be brought after twelve months from the last day of any month of actual attendance for which attendance is claimed. All claims shall show the names of the students and the dates of the trips for which the allowance is claimed and shall be signed by the claimant.

**Source:** Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1908; Laws 1949, c. 256, § 129, p. 736; Laws 1971, LB 215, § 1; R.S.1943, (1994), § 79-491; Laws 1996, LB 900, § 373.

Filing of claim monthly is a mandatory prerequisite to recovery. *George v. School Dist. No. 24 of Red Willow County*, 157 Neb. 791, 61 N.W.2d 401 (1953).

**79-613 Pupils; transportation allowance; temporary residence; attendance at another school; how computed.**

(1) When a student or students whose family would otherwise be eligible for the transportation allowance provided in section 79-611 reside temporarily for school purposes within four miles of the schoolhouse, the family of such student or students shall be paid two hundred eighty-five percent of the mileage rate provided in section 81-1176 for each mile actually and necessarily traveled by which the distance traveled one way from the residence of such family to the temporary residence exceeds three miles.

(2) When (a) a student or students whose family would otherwise be eligible for the transportation allowance provided in section 79-611 attend school in an adjacent school district due to convenience of the family and (b) the school district of residence pays tuition on behalf of such student or students pursuant to section 79-598, there shall also be paid by such school district of residence a transportation allowance equal to two hundred eighty-five percent of the mileage rate provided in section 81-1176 for each mile actually and necessarily traveled on each day of attendance by which the distance traveled one way from the residence of such student or students to the schoolhouse in the adjacent school district exceeds three miles.

**Source:** Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1909; Laws 1949, c. 256, § 130, p. 736; Laws 1963, c. 483, § 2, p. 1554; Laws 1986, LB 419, § 2; R.S.1943, (1994), § 79-492; Laws 1996, LB 900, § 374.

**ARTICLE 7**

**ACCREDITATION, CURRICULUM, AND INSTRUCTION**

(a) MISSION AND INTENT FOR THE PUBLIC SCHOOLS

- Section 79-701. Mission of public school system.
- 79-702. Public school system; legislative intent.

(b) ACCREDITATION

- 79-703. Public schools; approval and accreditation standards; accreditation committee; duties; legislative intent.
- 79-704. Biennial secondary course offerings; authorized; when.

(c) CURRICULUM AND INSTRUCTION REQUIREMENTS

- 79-705. State Fire Day; Fire Recognition Day; designation; how observed.
- 79-706. Fire prevention instruction; requirements.
- 79-707. Flags; United States; State of Nebraska; display.
- 79-708. Flags and flagstaffs; provide; payment.
- 79-709. School work; annual exhibit; how conducted; premiums.
- 79-710. Repealed. Laws 1997, LB 347, § 59.
- 79-711. Repealed. Laws 1997, LB 347, § 59.
- 79-712. Public school; health education; requirements.
- 79-713. Commissioner of Education; drug education; course on health education; prepare; distribute.
- 79-714. School systems; tobacco, alcohol, and drugs; failure to instruct; action of State Department of Education.

## SCHOOLS

### Section

- 79-715. Eye protective devices; required; when; term, defined; commissioner; duties.
- 79-716. Coordination of curriculum; when required; costs.
- 79-717. Class VI school district elementary school coordinator; qualifications; duties.
- 79-718. Junior Mathematics Prognosis Examination; legislative intent.
- 79-719. Multicultural education, defined.
- 79-720. Multicultural education program; incorporation into curriculum; department; duties.
- 79-721. Multicultural education; school districts and department; duties; loss of accreditation.
- 79-722. Evaluation of multicultural education program; report.
- 79-723. Multicultural education; rules and regulations.
- 79-724. American citizenship; committee on Americanism; created; duties; required instruction; patriotic exercises; duties of officers.
- 79-725. Character education; principles of instruction; duty of teachers.
- 79-726. Character education; outline of instruction; duty of Commissioner of Education.
- 79-727. Americanism and character education; violation; penalty.
- 79-728. Kindergarten programs; required.

### (d) HIGH SCHOOL GRADUATION REQUIREMENTS AND EQUIVALENCY DIPLOMA

- 79-729. High school students; graduation requirements.
- 79-730. Diploma of high school equivalency; issuance by Commissioner of Education; conditions.
- 79-731. Diploma of high school equivalency; application; fee; disbursement; duplicate; transcript; fees.
- 79-732. Diploma of high school equivalency; State Board of Education; rules and regulations; adopt.
- 79-733. Diplomas of high school equivalency; acceptance by colleges.

### (e) BOOKS, EQUIPMENT, AND SUPPLIES

- 79-734. School textbooks, equipment, and supplies; purchase and loan; rules and regulations.
- 79-734.01. Textbook contracts; requirements for publisher or manufacturer.
- 79-735. School books, equipment, and supplies; payment.
- 79-736. School books; contracts with members of combination or trust; effect.
- 79-737. School books; ownership; care; liability of pupils for damage.

### (f) VOCATIONAL EDUCATION

- 79-738. State Board of Vocational Education; legislation and funds; duties.
- 79-739. Vocational education; State Treasurer, custodian of funds.
- 79-740. State Board of Vocational Education; designation; meetings; quorum; executive officer.
- 79-741. State Board of Vocational Education; duties.
- 79-742. State Board of Vocational Education; staff members; appointment.
- 79-743. Vocational school, department, or course; establishment; reimbursement; when.
- 79-744. State Board of Vocational Education; additional duties.
- 79-745. Vocational educational needs; legislative findings.
- 79-746. Interdistrict school agreements; authorized.
- 79-747. Interdistrict school agreement; tax levy.

### (g) SCHOOL RESTRUCTURING

- 79-748. Legislative findings and intent.
- 79-749. Repealed. Laws 1997, LB 347, § 59.
- 79-750. Rule, regulation, or policy; waiver authorized.

### (h) NEBRASKA SCHOOLS ACCOUNTABILITY COMMISSION

- 79-751. Repealed. Laws 1997, LB 347, § 59.
- 79-752. Repealed. Laws 1997, LB 347, § 59.

## Section

- 79-753. Repealed. Laws 1997, LB 347, § 59.  
 79-754. Repealed. Laws 1997, LB 347, § 59.  
 79-755. Repealed. Laws 1997, LB 347, § 59.  
 79-756. Repealed. Laws 2013, LB 410, § 24.

## (i) QUALITY EDUCATION ACCOUNTABILITY ACT

- 79-757. Act, how cited.  
 79-758. Terms, defined.  
 79-759. Pilot project; standard college admission test; report.  
 79-760. Repealed. Laws 2012, LB 870, § 7.  
 79-760.01. Academic content standards; State Board of Education; duties.  
 79-760.02. Academic content standards; school districts, educational service units, and learning communities; duties.  
 79-760.03. Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties; technical advisory committee; terms; expenses.  
 79-760.04. Repealed. Laws 2012, LB 870, § 7.  
 79-760.05. Statewide system for tracking individual student achievement; State Board of Education; duties; school districts; provide data; analysis and reports.  
 79-760.06. Accountability system; combine multiple indicators; State Department of Education; powers; duties; designation of priority schools.  
 79-760.07. Priority school; intervention team; members; duties; expenses; develop progress plan; contents; compliance required; review; school board; duties; Commissioner of Education; report; contents.  
 79-761. Mentor teacher programs; State Board of Education; duties.  
 79-762. Rules and regulations.

## (j) CAREER EDUCATION PARTNERSHIP ACT

- 79-763. Repealed. Laws 2009, LB 476, § 6.  
 79-764. Repealed. Laws 2009, LB 476, § 6.  
 79-765. Repealed. Laws 2009, LB 476, § 6.  
 79-766. Repealed. Laws 2009, LB 476, § 6.  
 79-767. Repealed. Laws 2009, LB 476, § 6.  
 79-768. Repealed. Laws 2009, LB 476, § 6.

## (k) LEARNING COMMUNITY FOCUS SCHOOL OR PROGRAM

- 79-769. Focus programs; focus schools; magnet schools; authorized; requirements.

## (l) CERTIFICATE OF ATTENDANCE

- 79-770. Certificate of attendance; participation in high school graduation ceremony.

## (m) NEBRASKA COMMUNITY COLLEGE DEGREE

- 79-771. Nebraska community college degrees; how treated.

## (n) CENTER FOR STUDENT LEADERSHIP AND EXTENDED LEARNING ACT

- 79-772. Act, how cited.  
 79-773. Legislative findings.  
 79-774. Terms, defined.  
 79-775. Purpose of act; Center for Student Leadership and Extended Learning; duties.

## (o) POLICY TO SHARE STUDENT DATA

- 79-776. State Board of Education; policy to share student data; duties.

## (p) CAREER ACADEMY

- 79-777. Career academy; establishment and operation; duties; funding; department; define standards and criteria.

## (a) MISSION AND INTENT FOR THE PUBLIC SCHOOLS

**79-701 Mission of public school system.**

The Legislature hereby finds and declares that the mission of the State of Nebraska, through its public school system, is to:

(1) Offer each individual the opportunity to develop competence in the basic skills of communications, computations, and knowledge of basic facts concerning the environment, history, and society;

(2) Offer each individual the opportunity to develop higher order thinking and problem-solving skills by means of adequate preparation in mathematics, science, the social sciences, and foreign languages and by means of appropriate and progressive use of technology;

(3) Instill in each individual the ability and desire to continue learning throughout his or her life;

(4) Encourage knowledge and understanding of political society and democracy in order to foster active participation;

(5) Encourage the creative potential of each individual through exposure to the fine arts and humanities;

(6) Encourage a basic understanding of and aid the development of good health habits; and

(7) Offer each individual the opportunity for career exploration and awareness.

**Source:** Laws 1984, LB 994, § 1; R.S.1943, (1994), § 79-4,140.01; Laws 1996, LB 900, § 375.

#### **79-702 Public school system; legislative intent.**

(1) The Legislature recognizes that education as an investment in human resources is fundamental to the quality of life and economic development of Nebraskans. The Legislature further recognizes that public education faces ever growing challenges in an era of accelerated change, sophisticated information systems, high technology, and global markets. It is the intent of the Legislature to join with local governing bodies in a strong and ongoing partnership to further advance the quality and responsiveness of Nebraska's education system.

(2) It is the intent of the Legislature to encourage and support all public schools in this state in order to carry out the state's mission to promote quality education as described in section 79-701. Attracting and retaining highly qualified instructors in order to foster and improve a student's learning experience is a key factor in quality education. The Legislature intends to foster high standards of performance for teachers, students, administrators, and programs of instruction in the public schools so that each person of school age shall have the opportunity to receive a quality education regardless of the size, wealth, or geographic location of the school district in which such person resides.

(3) The Legislature intends that the schools meet the individual needs and develop the particular skills of all young Nebraskans. The Legislature further intends that all persons who graduate from Nebraska high schools possess certain minimum levels of knowledge, skills, and understanding.

(4) The Legislature recognizes that the resources of the state should be used efficiently to support the public school system of this state. The Legislature intends to foster, encourage, and, where necessary, mandate the cooperation of all public education service providers, including public school districts, edu-

ational service units, and the State Department of Education, in order to achieve a quality education system.

**Source:** Laws 1984, LB 994, § 2; R.S.1943, (1994), § 79-4,140.02; Laws 1996, LB 900, § 376.

### (b) ACCREDITATION

**79-703 Public schools; approval and accreditation standards; accreditation committee; duties; legislative intent.**

(1) To ensure both equality of opportunity and quality of programs offered, all public schools in the state shall be required to meet quality and performance-based approval or accreditation standards as prescribed by the State Board of Education. The board shall establish a core curriculum standard, which shall include multicultural education and vocational education courses, for all public schools in the state. Accreditation and approval standards shall be designed to assure effective schooling and quality of instructional programs regardless of school size, wealth, or geographic location. The board shall recognize and encourage the maximum use of cooperative programs and may provide for approval or accreditation of programs on a cooperative basis, including the sharing of administrative and instructional staff, between school districts for the purpose of meeting the approval and accreditation requirements established pursuant to this section and section 79-318.

(2) The Commissioner of Education shall appoint an accreditation committee which shall be representative of the educational institutions and agencies of the state and shall include as a member the director of admissions of the University of Nebraska.

(3) The accreditation committee shall be responsible for: (a) Recommending appropriate standards and policies with respect to the accreditation and classification of schools; and (b) making recommendations annually to the commissioner relative to the accreditation and classification of individual schools. No school shall be considered for accreditation status which has not first fulfilled all requirements for an approved school.

(4) By school year 1993-94 all public schools in the state shall be accredited.

(5) It is the intent of the Legislature that all public school students shall have access to all educational services required of accredited schools. Such services may be provided through cooperative programs or alternative methods of delivery.

**Source:** Laws 1949, c. 248, § 1, p. 672; Laws 1953, c. 311, § 3, p. 1035; Laws 1984, LB 994, § 7; Laws 1985, LB 633, § 5; Laws 1988, LB 940, § 10; R.S.Supp.,1988, § 79-1247.02; Laws 1989, LB 15, § 3; Laws 1990, LB 259, § 30; Laws 1992, LB 922, § 6; R.S.1943, (1994), § 79-4,140.16; Laws 1996, LB 900, § 377.

#### Cross References

**Multicultural education program**, see section 79-719 et seq.

**Private, denominational, or parochial schools**, election not to meet approval or accreditation requirements, see section 79-1601.

**Vocational education**, interdistrict agreements, see section 79-745 et seq.

Constitutionality of this section was not passed upon because not raised in district court. *Ebberson v. School Dist. No. 64 of Cedar County*, 180 Neb. 119, 141 N.W.2d 452 (1966).

The purpose of accreditation is to maintain adequate school programs and to provide better instructional opportunities. *Pribil v. French*, 179 Neb. 602, 139 N.W.2d 356 (1966).

This section did not go beyond protecting the interests of the state in education. *De Jonge v. School Dist. of Bloomington*, 179 Neb. 539, 139 N.W.2d 296 (1966); *Meyerkorth v. State*, 173 Neb. 889, 115 N.W.2d 585 (1962).

Accreditation and approval are two separate and entirely different duties. *School Dist. No. 39 of Washington County v. Decker*, 159 Neb. 693, 68 N.W.2d 354 (1955).

### **79-704 Biennial secondary course offerings; authorized; when.**

(1) Except as otherwise provided in subsection (2) of this section, any school board of a school district or any governing authority of a private school may establish alternating biennial secondary course offerings, not to exceed one course in each of four subject fields as designated by such board or governing authority, as part of the total instructional units provided each school term for the purpose of meeting minimum annual criteria for accreditation under sections 79-318 and 79-703. Reporting of biennial course offerings which are to receive annual instructional unit credit in meeting accreditation standards shall be on forms prescribed by the State Department of Education.

(2) For school year 2009-10 and each school year thereafter, a school board of a school district shall not establish an alternating biennial secondary course offering in any subject area for which the State Board of Education has adopted content standards pursuant to section 79-760.01.

**Source:** Laws 1985, LB 633, § 6; Laws 1986, LB 997, § 13; R.S.1943, (1987), § 79-1241; Laws 1989, LB 15, § 2; R.S.1943, (1994), § 79-4,140.15; Laws 1996, LB 900, § 378; Laws 2006, LB 1208, § 2.

## (c) CURRICULUM AND INSTRUCTION REQUIREMENTS

### **79-705 State Fire Day; Fire Recognition Day; designation; how observed.**

For the purpose of creating public sentiment and calling public attention to the great damage caused both to life and property by fire, the Friday before Fire Recognition Day shall be designated and known as State Fire Day. State Fire Day shall be observed by the public, private, and parochial schools of the state with exercises appropriate to the subject and the day. The second Saturday in May is designated and shall be known as Fire Recognition Day.

**Source:** Laws 1911, c. 126, § 1, p. 431; R.S.1913, § 6850; C.S.1922, § 6421; C.S.1929, § 79-1201; R.S.1943, § 79-1201; Laws 1949, c. 256, § 160, p. 746; Laws 1971, LB 917, § 1; R.S.1943, (1994), § 79-4,122; Laws 1996, LB 900, § 379; Laws 1997, LB 347, § 18.

### **79-706 Fire prevention instruction; requirements.**

In addition to any required monthly fire drill, every public, private, denominational, or parochial school shall provide regular periods of instruction in the subject of fire dangers and in methods of fire prevention.

**Source:** Laws 1911, c. 126, § 2, p. 431; R.S.1913, § 6851; C.S.1922, § 6422; C.S.1929, § 79-1202; R.S.1943, § 79-1202; Laws 1949, c. 256, § 161, p. 746; Laws 1972, LB 1284, § 21; Laws 1982, LB 933, § 3; Laws 1984, LB 749, § 1; R.S.1943, (1994), § 79-4,123; Laws 1996, LB 900, § 380.

#### Cross References

For school drills under supervision of the State Fire Marshal, see section 81-527.

### **79-707 Flags; United States; State of Nebraska; display.**

The flags of the United States of America and of the State of Nebraska shall be prominently displayed on the school grounds of every public school in the state on each day that such school is in session, in accordance with the standards prescribed for the display of the flag of the United States of America. For the purposes of this section and section 79-708, public school shall mean all institutions of learning supported in whole or in part by public funds, including those providing postsecondary education.

**Source:** Laws 1971, LB 218, § 1; R.S.1943, (1994), § 79-4,128.01; Laws 1996, LB 900, § 381.

Cross References

Americanism instruction, see section 79-724.

**79-708 Flags and flagstaffs; provide; payment.**

The governing body of each school shall provide suitable flags and flagstaffs to carry out the provisions of this section and section 79-707, and the cost of such flags and flagstaffs shall be paid from the general operating funds of each school.

**Source:** Laws 1971, LB 218, § 2; R.S.1943, (1994), § 79-4,128.02; Laws 1996, LB 900, § 382.

**79-709 School work; annual exhibit; how conducted; premiums.**

There may be held at the county fair or other place in each county, under the supervision and direction of the county board of commissioners or county board of supervisors or its designee, an exhibit of school work done in each school district of the county during the current school year. The nature and character of the exhibit shall be determined by the county board. The county board may annually offer and award premiums intended to stimulate the interest in school affairs. A list of premiums to be awarded shall be mailed by the county board or its designee to the teacher, principal, or superintendent of each public, private, denominational, and parochial school in each school district in the county on or before January 15 of each year in which an exhibit shall be held.

**Source:** Laws 1919, c. 247, § 1, p. 1016; C.S.1922, § 6543; Laws 1927, c. 89, § 1, p. 258; C.S.1929, § 79-2120; R.S.1943, § 79-2129; Laws 1949, c. 256, § 177, p. 750; Laws 1963, c. 486, § 1, p. 1557; R.S.1943, (1994), § 79-4,139; Laws 1996, LB 900, § 383; Laws 1999, LB 272, § 85.

**79-710 Repealed. Laws 1997, LB 347, § 59.**

**79-711 Repealed. Laws 1997, LB 347, § 59.**

**79-712 Public school; health education; requirements.**

Provisions shall be made by the proper local school authorities for instructing the pupils in all public schools in a comprehensive health education program which shall include instruction (1) as to the physiological, psychological, and sociological aspects of drug use, misuse, and abuse and (2) on intellectual disability and other developmental disabilities, such as cerebral palsy, autism, and epilepsy, their causes, and the prevention thereof through proper nutrition and the avoidance of the consumption of drugs as defined in this section. For

purposes of this section, drugs means any and all biologically active substances used in the treatment of illnesses or for recreation or pleasure. Special emphasis shall be placed upon the commonly abused drugs of tobacco, alcohol, marijuana, hallucinogenics, amphetamines, barbiturates, and narcotics.

**Source:** Laws 1885, c. 83, § 1, p. 332; R.S.1913, § 6878; C.S.1922, § 6446; C.S.1929, § 79-1409; R.S.1943, § 79-1408; Laws 1949, c. 256, § 370, p. 815; Laws 1971, LB 51, § 1; Laws 1982, LB 423, § 1; R.S.1943, (1987), § 79-1270; Laws 1989, LB 15, § 4; R.S. 1943, (1994), § 79-4,140.17; Laws 1996, LB 900, § 386; Laws 2013, LB23, § 44.

**79-713 Commissioner of Education; drug education; course on health education; prepare; distribute.**

The Commissioner of Education shall prepare such teaching aids and materials as may be necessary for an effective course in comprehensive health education, which shall include drug education, for distribution to all public and private schools requesting such materials and approved for continued legal operation under rules and regulations adopted and promulgated by the State Board of Education pursuant to subdivision (5)(c) of section 79-318.

**Source:** Laws 1971, LB 51, § 2; R.S.1943, (1987), § 79-1270.01; Laws 1989, LB 15, § 5; R.S.1943, (1994), § 79-4,140.18; Laws 1996, LB 900, § 387.

**79-714 School systems; tobacco, alcohol, and drugs; failure to instruct; action of State Department of Education.**

School systems failing to meet the provisions of sections 79-712 and 79-713 shall be guilty of a deviation from the rules and regulations for the approval and accreditation of schools, and proper action by the State Department of Education shall be taken.

**Source:** Laws 1971, LB 51, § 3; R.S.1943, (1987), § 79-1270.02; Laws 1989, LB 15, § 6; R.S.1943, (1994), § 79-4,140.19; Laws 1996, LB 900, § 388.

**79-715 Eye protective devices; required; when; term, defined; commissioner; duties.**

(1) Every student and teacher in schools or other educational institutions shall be required to 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 shall be furnished by the school or educational institution for all students, teachers, and 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 educational institution in this state instructions and recommendations for implementing the eye safety provisions of this section.

**Source:** Laws 1984, LB 999, § 1; R.S.1943, (1994), § 79-4,144; Laws 1996, LB 900, § 389; Laws 2002, LB 1172, § 12.

**Cross References**

Postsecondary educational institutions, eye protective devices, see section 85-901.

**79-716 Coordination of curriculum; when required; costs.**

Every affiliated high school district and every Class VI school district shall undertake efforts to provide for coordination of the curriculum between the elementary school program of instruction of participating Class I school districts and the high school program of instruction of such affiliated high school district or Class VI school district. Notwithstanding reasonable and good faith efforts to provide for coordination of curriculum, each school board of a Class I school district shall retain the final authority to determine matters of curriculum. Any additional costs incurred in providing the coordinated services required by this section shall be included as a cost of the Class VI school district. In the case of an affiliated school system, any additional costs incurred for curriculum coordination pursuant to this section shall be funded through the budget of the high school district. Any additional services required by any affiliated Class I district shall be funded through such Class I district's budget which may include contractual or purchased services.

**Source:** Laws 1988, LB 940, § 6; Laws 1990, LB 259, § 31; Laws 1991, LB 511, § 44; Laws 1992, LB 245, § 49; Laws 1994, LB 858, § 8; R.S.1943, (1994), § 79-4,158.01; Laws 1996, LB 900, § 390.

**Cross References**

**Affiliation:**

Duties of advisory committee, see section 79-4,103.

Petition contents, see section 79-427.

**79-717 Class VI school district elementary school coordinator; qualifications; duties.**

Each Class VI school district may have an elementary school coordinator who holds a valid Nebraska certificate to administer with an endorsement in elementary education. The responsibility of the coordinator shall be to coordinate the educational programs of all Class I schools within the boundaries of

the Class VI district by advising the school board and the teachers of such Class I districts.

**Source:** Laws 1967, c. 523, § 1, p. 1744; Laws 1973, LB 355, § 1; R.S.1943, (1994), § 79-1110; Laws 1996, LB 900, § 391; Laws 2003, LB 685, § 3.

**Cross References**

Certificate to administer, Nebraska, see sections 79-801 to 79-805.

**79-718 Junior Mathematics Prognosis Examination; legislative intent.**

It is the intent of the Legislature that the Junior Mathematics Prognosis Examination be available to every student in the eleventh grade in Nebraska in order to measure his or her level of preparation for college-level mathematics.

The immediate goal of the examination is to decrease the number of Nebraska first-year college students who begin college mathematics at a remedial level. The long-term goal is to help develop a more mathematically and scientifically literate society.

**Source:** Laws 1989, LB 134, § 1; R.S.1943, (1994), § 79-4,221; Laws 1996, LB 900, § 392.

**79-719 Multicultural education, defined.**

For purposes of sections 79-719 to 79-723, multicultural education includes, but is not limited to, studies relative to the culture, history, and contributions of African Americans, Hispanic Americans, Native Americans, and Asian Americans. Special emphasis shall be placed on human relations and sensitivity toward all races.

**Source:** Laws 1992, LB 922, § 1; R.S.1943, (1994), § 79-4,229; Laws 1996, LB 900, § 393.

**79-720 Multicultural education program; incorporation into curriculum; department; duties.**

(1) Each school district, in consultation with the State Department of Education, shall develop for incorporation into all phases of the curriculum of grades kindergarten through twelve a multicultural education program.

(2) The department shall create and distribute recommended multicultural education curriculum guidelines to all school districts. Each district shall create its own multicultural education program based on such recommended guidelines.

(3) The incorporation of the multicultural education program into the curriculum of each district shall not change (a) the number of instructional hours prescribed for elementary and high school students or (b) the number of instructional hours dedicated to the existing curriculum of each district.

**Source:** Laws 1992, LB 922, § 2; Laws 1993, LB 27, § 1; R.S.1943, (1994), § 79-4,230; Laws 1996, LB 900, § 394; Laws 2011, LB333, § 2.

**79-721 Multicultural education; school districts and department; duties; loss of accreditation.**

(1) Each school district shall present evidence annually, in a form prescribed by the State Department of Education, to the department that multicultural education is being taught to students pursuant to section 79-720. The department shall evaluate the effectiveness of the multicultural education program and establish reasonable timelines for the submission of such evidence.

(2) A school district which fails to provide or fails to provide evidence annually of multicultural education pursuant to such section shall lose its accreditation status.

**Source:** Laws 1992, LB 922, § 3; R.S.1943, (1994), § 79-4,231; Laws 1996, LB 900, § 395.

#### **79-722 Evaluation of multicultural education program; report.**

In conjunction with the multicultural education program prescribed in section 79-720, the State Department of Education shall design a process for evaluating the implementation and effectiveness of each multicultural education program, including the collection of baseline data. The collection of baseline data for evaluating the implementation and effectiveness of each multicultural education program shall not include the testing, assessment, or evaluation of individual students' attitudes or beliefs. An evaluation of the implementation and effectiveness of each multicultural education program shall be conducted every five school years. On or before November 1, 2013, and on or before November 1 every five years thereafter, the department shall report the results of each evaluation to the Clerk of the Legislature, the Education Committee of the Legislature, and the State Board of Education and publish such report on a web site established by the department. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically.

**Source:** Laws 1992, LB 922, § 4; Laws 1993, LB 27, § 2; R.S.1943, (1994), § 79-4,232; Laws 1996, LB 900, § 396; Laws 2011, LB333, § 3; Laws 2012, LB782, § 150.

#### **79-723 Multicultural education; rules and regulations.**

The State Department of Education shall adopt and promulgate rules and regulations to carry out sections 79-719 to 79-722.

**Source:** Laws 1992, LB 922, § 5; R.S.1943, (1994), § 79-4,233; Laws 1996, LB 900, § 397.

#### **79-724 American citizenship; committee on Americanism; created; duties; required instruction; patriotic exercises; duties of officers.**

An informed, loyal, just, and patriotic citizenry is necessary to a strong, stable, just, and prosperous America. Such a citizenry necessitates that every member thereof be fully acquainted with the nation's history and that he or she be in full accord with our form of government and fully aware of the liberties, opportunities, and advantages of which we are possessed and the sacrifices and struggles of those through whose efforts these benefits were gained. Since youth is the time most susceptible to the acceptance of principles and doctrines that will influence men and women throughout their lives, it is one of the first duties of our educational system to conduct its activities, choose its textbooks, and arrange its curriculum in such a way that the love of liberty, justice, democra-

cy, and America will be instilled in the hearts and minds of the youth of the state.

(1) Every school board shall, at the beginning of each school year, appoint from its members a committee of three, to be known as the committee on Americanism. The committee on Americanism shall:

(a) Carefully examine, inspect, and approve all textbooks used in the teaching of American history and civil government in the school. Such textbooks shall adequately stress the services of the men and women who achieved our national independence, established our constitutional government, and preserved our union and shall be so written to include contributions by ethnic groups as to develop a pride and respect for our institutions and not be a mere recital of events and dates;

(b) Assure themselves as to the character of all teachers employed and their knowledge and acceptance of the American form of government; and

(c) Take all such other steps as will assure the carrying out of the provisions of this section.

(2) All American history courses approved for grade levels as provided by this section shall include and adequately stress contributions of all ethnic groups (a) to the development and growth of America into a great nation, (b) to art, music, education, medicine, literature, science, politics, and government, and (c) to the war services in all wars of this nation.

(3) All grades of all public, private, denominational, and parochial schools, below the sixth grade, shall devote at least one hour per week to exercises or teaching periods for the following purpose:

(a) The recital of stories having to do with American history or the deeds and exploits of American heroes;

(b) The singing of patriotic songs and the insistence that every pupil memorize the Star-Spangled Banner and America; and

(c) The development of reverence for the flag and instruction as to proper conduct in its presentation.

(4) In at least two of the three grades from the fifth grade to the eighth grade in all public, private, denominational, and parochial schools, at least three periods per week shall be set aside to be devoted to the teaching of American history from approved textbooks, taught in such a way as to make the course interesting and attractive and to develop a love of country.

(5) In at least two grades of every high school, at least three periods per week shall be devoted to the teaching of civics, during which courses specific attention shall be given to the following matters:

(a) The United States Constitution and the Constitution of Nebraska;

(b) The benefits and advantages of our form of government and the dangers and fallacies of Nazism, Communism, and similar ideologies; and

(c) The duties of citizenship, including active participation in the improvement of a citizen's community, state, country, and world and the value and practice of civil discourse between opposing interests.

(6) Appropriate patriotic exercises suitable to the occasion shall be held under the direction of the superintendent in every public, private, denominational, and parochial school on Lincoln's birthday, Washington's birthday, Flag

Day, Memorial Day, and Veterans Day, or on the day preceding or following such holiday, if the school is in session.

(7) Every school board, the State Board of Education, and the superintendent of each school district in the state shall be held directly responsible in the order named for carrying out this section, and neglect thereof by any employee or appointed official shall be considered a dereliction of duty and cause for dismissal.

**Source:** Laws 1949, c. 256, § 19, p. 697; Laws 1969, c. 705, § 1, p. 2705; Laws 1971, LB 292, § 3; R.S.1943, (1994), § 79-213; Laws 1996, LB 900, § 398; Laws 1999, LB 272, § 86; Laws 2011, LB544, § 1.

#### Cross References

Flag display requirements, see section 79-707.

Violation, penalty, see section 79-727.

### **79-725 Character education; principles of instruction; duty of teachers.**

Each teacher employed to give instruction in any public, private, parochial, or denominational school in the State of Nebraska shall arrange and present his or her instruction to give special emphasis to common honesty, morality, courtesy, obedience to law, respect for the national flag, the United States Constitution, and the Constitution of Nebraska, respect for parents and the home, the dignity and necessity of honest labor, and other lessons of a steadying influence which tend to promote and develop an upright and desirable citizenry.

**Source:** Laws 1927, c. 85, § 1, p. 253; C.S.1929, § 79-2131; R.S.1943, § 79-2139; Laws 1949, c. 256, § 20, p. 699; R.S.1943, (1994), § 79-214; Laws 1996, LB 900, § 399.

### **79-726 Character education; outline of instruction; duty of Commissioner of Education.**

The Commissioner of Education shall prepare an outline with suggestions such as in his or her judgment will best accomplish the purpose set forth in section 79-725 and shall incorporate the same in the regular course of study for the first twelve grades of all schools of the State of Nebraska.

**Source:** Laws 1927, c. 85, § 2, p. 253; C.S.1929, § 79-2132; R.S.1943, § 79-2140; Laws 1949, c. 256, § 21, p. 700; R.S.1943, (1994), § 79-215; Laws 1996, LB 900, § 400.

### **79-727 Americanism and character education; violation; penalty.**

Any person violating the provisions of sections 79-724 to 79-726 is guilty of a Class III misdemeanor.

**Source:** Laws 1996, LB 900, § 401.

### **79-728 Kindergarten programs; required.**

All Class I, II, III, IV, and V school districts shall offer a kindergarten program.

**Source:** Laws 1988, LB 1197, § 2; R.S.1943, (1994), § 79-201.11; Laws 1996, LB 900, § 402.

Kindergarten, entrance requirements, see section 79-214.

(d) HIGH SCHOOL GRADUATION REQUIREMENTS  
AND EQUIVALENCY DIPLOMA

**79-729 High school students; graduation requirements.**

The Legislature recognizes the importance of assuring that all persons who graduate from Nebraska high schools possess certain minimum levels of knowledge, skills, and understanding. Beginning in school year 1987-88, each high school student shall complete a minimum of two hundred high school credit hours prior to graduation. At least eighty percent of such credit hours shall be core curriculum courses prescribed by the State Board of Education. The State Board of Education may establish recommended statewide graduation guidelines. This section does not apply to high school students whose individualized education plans prescribe a different course of instruction. This section does not prohibit the governing board of any high school from prescribing specific graduation guidelines as long as such guidelines do not conflict with this section. For purposes of this section, high school means grades nine through twelve and credit hour shall be defined by appropriate rules and regulations of the State Board of Education but shall not be less than the amount of credit given for successful completion of a course which meets at least one period per week for at least one semester.

**Source:** Laws 1984, LB 994, § 8; R.S.1943, (1994), § 79-4,140.03; Laws 1996, LB 900, § 403.

**79-730 Diploma of high school equivalency; issuance by Commissioner of Education; conditions.**

The Commissioner of Education may issue a diploma of high school equivalency conveying all the significance and privilege of a regular high school diploma to any person who is not a high school graduate if:

(1) The person is and has been a resident of Nebraska for at least thirty days immediately preceding application or if his or her final period of high school attendance during which credit was earned toward graduation was in a Nebraska high school;

(2) On the basis of such person's achievements in approved tests and other criteria deemed pertinent by the Commissioner of Education, there is reasonable certainty that he or she has attained the educational development and abilities of the typical high school graduate; and

(3) Such person has attained his or her eighteenth birthday and is unable to secure a diploma from the high school he or she last attended or the class in which he or she was enrolled at the time of his or her withdrawal from school has been graduated for at least one year.

**Source:** Laws 1959, c. 399, § 1, p. 1358; Laws 1969, c. 721, § 2, p. 2750; Laws 1975, LB 449, § 1; R.S.1943, (1994), § 79-4,147.01; Laws 1996, LB 900, § 404.

**79-731 Diploma of high school equivalency; application; fee; disbursement; duplicate; transcript; fees.**

The application for a diploma of high school equivalency shall be submitted on a form to be furnished by the Commissioner of Education and shall be accompanied by a fee of five dollars which will not be refundable under any circumstances. A fee of two dollars shall be charged for the issuance of a duplicate diploma of high school equivalency. A fee of two dollars shall be charged for the issuance of an official transcript. All fees collected for the issuance or reissuance of such a diploma shall be remitted to the State Treasurer for credit to the General Fund.

**Source:** Laws 1959, c. 399, § 2, p. 1359; Laws 1969, c. 721, § 3, p. 2751; Laws 1975, LB 449, § 2; Laws 1982, LB 928, § 71; R.S.1943, (1994), § 79-4,147.02; Laws 1996, LB 900, § 405.

**79-732 Diploma of high school equivalency; State Board of Education; rules and regulations; adopt.**

The State Board of Education shall adopt reasonable rules and regulations for the administration of sections 79-730 to 79-732, and the decision of the State Board of Education with reference to the eligibility of an applicant for a diploma of high school equivalency shall be final.

**Source:** Laws 1959, c. 399, § 3, p. 1359; Laws 1975, LB 449, § 3; R.S.1943, (1994), § 79-4,147.03; Laws 1996, LB 900, § 406.

**79-733 Diplomas of high school equivalency; acceptance by colleges.**

Diplomas of high school equivalency issued pursuant to section 79-730 shall be accepted by the University of Nebraska, the community colleges, and the state colleges for enrollment purposes.

**Source:** Laws 1969, c. 721, § 5, p. 2751; Laws 1975, LB 449, § 4; R.S.1943, (1994), § 79-4,147.04; Laws 1996, LB 900, § 407.

(e) BOOKS, EQUIPMENT, AND SUPPLIES

**79-734 School textbooks, equipment, and supplies; purchase and loan; rules and regulations.**

(1) School boards and boards of education of all classes of school districts shall purchase all textbooks, equipment, and supplies necessary for the schools of such district. The duty to make such purchases may be delegated to employees of the school district.

(2) School boards and boards of education shall purchase and loan textbooks to all children who are enrolled in kindergarten to grade twelve of a public school and, upon individual request, to children who are enrolled in kindergarten to grade twelve of a private school which is approved for continued legal operation under rules and regulations established by the State Board of Education pursuant to subdivision (5)(c) of section 79-318. The Legislature may appropriate funds to carry out the provisions of this subsection. A school district is not obligated to spend any money for the purchase and loan of textbooks to children enrolled in private schools other than funds specifically appropriated by the Legislature to be distributed by the State Department of Education for the purpose of purchasing and loaning textbooks as provided in this subsection. Textbooks loaned to children enrolled in kindergarten to grade twelve of such private schools shall be textbooks which are designated for use in the public schools of the school district in which the child resides or the

school district in which the private school the child attends is located. Such textbooks shall be loaned free to such children subject to such rules and regulations as are or may be prescribed by such school boards or boards of education. The State Department of Education shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include provisions for the distribution of funds appropriated for textbooks. The rules and regulations shall include a deadline for applications from school districts for distribution of funds. If funds are not appropriated to cover the entire cost of applications, a pro rata reduction shall be made.

**Source:** Laws 1891, c. 46, § 1, p. 334; Laws 1903, c. 99, § 1, p. 570; R.S.1913, § 6914; C.S.1922, § 6498; C.S.1929, § 79-1801; R.S. 1943, § 79-1801; Laws 1947, c. 283, § 1, p. 891; Laws 1949, c. 256, § 156, p. 745; Laws 1971, LB 659, § 2; Laws 1973, LB 358, § 3; Laws 1983, LB 203, § 1; Laws 1986, LB 757, § 1; Laws 1995, LB 159, § 1; R.S.Supp.,1995, § 79-4,118; Laws 1996, LB 900, § 408.

The loan of textbooks designated for use in public schools to private school students under this section is permissible under the Constitutions of Nebraska and the United States. The language of this section is not so vague that a school board will be required to guess at its meaning. Upon individual request means upon request of the student. This section does have a secular purpose: it provides all schoolchildren, public or private, with free textbooks designated for use in the public schools. Merely loaning secular textbooks to nonpublic school students, as pro-

vided in this section, will not require close supervision of nonpublic school teachers by government and will not foster an excessive government entanglement with religion. *Cunningham v. Lutjeharms*, 231 Neb. 756, 437 N.W.2d 806 (1989).

L.B. 659, Laws 1971, intended to provide financial assistance to nonpublic schools through the loan of secular textbooks, is unconstitutional. *Gaffney v. State Department of Education*, 192 Neb. 358, 220 N.W.2d 550 (1974).

#### **79-734.01 Textbook contracts; requirements for publisher or manufacturer.**

(1) On and after January 1, 2003, all contracts for the purchase of textbooks for school districts and educational service units shall require the publisher or manufacturer to provide to the school district or educational service unit, at no cost, (a) computer files or other electronic versions of each textbook title purchased and (b) the right to transcribe, reproduce, modify, and distribute each textbook title purchased in braille, large print if the publisher or manufacturer does not offer a large-print edition, or other specialized accessible media exclusively for use by students in the same school district or educational service unit who are blind or visually impaired.

(2) The contract shall also provide that: (a) Within thirty days after receiving a request from a school district or educational service unit, the publisher or manufacturer shall provide computer files or other electronic versions of each textbook title purchased to such school district or educational service unit; (b) the computer files or other electronic version shall maintain the structural integrity of the standard instructional materials, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary; (c) if the technology is not available to convert a math, science, or other nonliterary textbook into the format prescribed in this section, the publisher or manufacturer shall not be required to provide computer files or other electronic versions of the textbook; and (d) upon the willful failure of the publisher or manufacturer to comply with the requirements of the contract pursuant to this section, the publisher or manufacturer shall reimburse the school district or educational service unit for the cost of creating such computer files or electronic versions.

**Source:** Laws 2002, LB 647, § 1.

**79-735 School books, equipment, and supplies; payment.**

For the purpose of paying for school books, equipment, and supplies, the school district officers may draw an order on the district treasurer for the amount of school books, equipment, and supplies ordered.

**Source:** Laws 1891, c. 46, § 3, p. 335; R.S.1913, § 6916; C.S.1922, § 6500; C.S.1929, § 79-1803; R.S.1943, § 79-1803; Laws 1949, c. 256, § 157, p. 745; Laws 1971, LB 659, § 3; Laws 1972, LB 1219, § 2; Laws 1973, LB 358, § 4; Laws 1986, LB 757, § 2; R.S.1943, (1994), § 79-4,119; Laws 1996, LB 900, § 409.

L.B. 659, Laws 1971, intended to provide financial assistance to nonpublic schools through the loan of secular textbooks, is unconstitutional. *Gaffney v. State Department of Education*, 192 Neb. 358, 220 N.W.2d 550 (1974).

**79-736 School books; contracts with members of combination or trust; effect.**

Any contract entered into under the provisions of section 79-734 with any publisher who becomes a party to any combination or trust for the purpose of raising the price of school textbooks shall, at the option of the school board or board of education of the district using such books, become null and void.

**Source:** Laws 1891, c. 46, § 5, p. 335; R.S.1913, § 6918; C.S.1922, § 6502; C.S.1929, § 79-1805; R.S.1943, § 79-1805; Laws 1947, c. 283, § 2, p. 891; Laws 1949, c. 256, § 158, p. 745; R.S.1943, (1994), § 79-4,120; Laws 1996, LB 900, § 410.

**79-737 School books; ownership; care; liability of pupils for damage.**

All books purchased by a school board or board of education shall be the property of the district and loaned free of charge to pupils of the school while they are pursuing a course of study in the school, but the board shall hold such pupils responsible for any damage to, loss of, or failure to return such books at the time and to the person that may be designated by the board.

**Source:** Laws 1891, c. 46, § 9, p. 336; R.S.1913, § 6922; C.S.1922, § 6506; C.S.1929, § 79-1809; R.S.1943, § 79-1809; Laws 1949, c. 256, § 159, p. 745; R.S.1943, (1994), § 79-4,121; Laws 1996, LB 900, § 411.

## (f) VOCATIONAL EDUCATION

**79-738 State Board of Vocational Education; legislation and funds; duties.**

The State Board of Vocational Education shall administer any legislation relating to vocational education enacted by the Legislature and shall direct the disbursement of and administer the use of all funds provided for vocational education and assigned to the State Department of Education.

**Source:** Laws 1917, c. 227, § 1, p. 559; Laws 1921, c. 68, § 1, p. 259; C.S.1922, §§ 6554a, 6556; C.S.1929, §§ 79-2201, 79-2206; R.S. 1943, § 79-2201; Laws 1949, c. 267, § 1, p. 881; Laws 1949, c. 256, § 408, p. 828; Laws 1955, c. 325, § 1, p. 1007; Laws 1990, LB 1090, § 31; R.S.1943, (1994), § 79-1419; Laws 1996, LB 900, § 412.

**79-739 Vocational education; State Treasurer, custodian of funds.**

The State Treasurer shall be the custodian of all funds allotted to this state from other sources for purposes of vocational education. He or she shall receive and provide for the proper custody and disbursement of such funds.

**Source:** Laws 1917, c. 227, § 2, p. 559; C.S.1922, § 6554b; C.S.1929, § 79-2202; R.S.1943, § 79-2202; Laws 1949, c. 256, § 409, p. 829; Laws 1990, LB 1090, § 32; R.S.1943, (1994), § 79-1420; Laws 1996, LB 900, § 413.

**79-740 State Board of Vocational Education; designation; meetings; quorum; executive officer.**

(1) The State Board of Education shall also be the State Board of Vocational Education and, when acting as the State Board of Vocational Education, shall assume the powers and duties provided in sections 79-738 to 79-744.

(2) The Commissioner of Education shall be the executive officer of the State Board of Vocational Education. The members of the State Board of Vocational Education shall receive no compensation for their services. They shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The State Board of Vocational Education shall meet in the office of the State Department of Education at least four times annually. It may meet at such other times and places as the board determines necessary for the proper and efficient conduct of its duties. Special meetings may be called by the presiding officer upon a written notice given at least five days preceding the meeting. In the absence of such a call by the presiding officer, the Commissioner of Education shall call such special meeting upon the written request of a majority of the board. Five members of the board shall constitute a quorum for the transaction of business.

**Source:** Laws 1917, c. 227, § 3, p. 559; Laws 1921, c. 75, § 1, p. 282; C.S.1922, § 6555; C.S.1929, § 79-2203; Laws 1941, c. 164, § 12, p. 657; C.S.Supp.,1941, § 79-2203; Laws 1943, c. 206, § 1, p. 685; R.S.1943, § 79-2203; Laws 1949, c. 256, § 410, p. 829; Laws 1951, c. 290, § 1, p. 958; Laws 1953, c. 313, § 1, p. 1038; Laws 1955, c. 325, § 2, p. 1008; Laws 1971, LB 421, § 3; Laws 1981, LB 204, § 160; Laws 1990, LB 1090, § 33; Laws 1993, LB 348, § 44; R.S.1943, (1994), § 79-1421; Laws 1996, LB 900, § 414.

Rule-making authority of State Board of Education extends to vocational Technical School No. 2, 183 Neb. 318, 159 N.W.2d 817 State Board of Vocational Education. *Campbell v. Area Vocational* (1968).

**79-741 State Board of Vocational Education; duties.**

The State Board of Vocational Education shall adopt the policies to be followed in administering vocational education and shall supervise the administration of the policies by the Commissioner of Education. The board shall cooperate with the United States Department of Education in the administration of federal legislation relating to vocational education and shall do all things necessary to entitle the state to receive the benefits of such federal legislation. The board may adopt and promulgate rules and regulations to carry out sections 79-738 to 79-744.

**Source:** Laws 1917, c. 227, § 4, p. 560; C.S.1922, § 6555a; C.S.1929, § 79-2204; Laws 1943, c. 206, § 2, p. 686; R.S.1943, § 79-2204; Laws 1949, c. 256, § 411, p. 829; Laws 1955, c. 324, § 10, p.

1005; Laws 1955, c. 325, § 3, p. 1008; Laws 1959, c. 413, § 3, p. 1381; Laws 1978, LB 756, § 50; Laws 1990, LB 1090, § 34; Laws 1993, LB 348, § 45; R.S.1943, (1994), § 79-1422; Laws 1996, LB 900, § 415; Laws 1998, Spec. Sess., LB 1, § 14.

**79-742 State Board of Vocational Education; staff members; appointment.**

The State Board of Vocational Education shall, on the recommendation of the Commissioner of Education, appoint staff members to carry out sections 79-738 to 79-744.

**Source:** Laws 1917, c. 227, § 5, p. 560; C.S.1922, § 6555b; C.S.1929, § 79-2205; Laws 1943, c. 206, § 3, p. 686; R.S.1943, § 79-2205; Laws 1947, c. 288, § 1, p. 897; Laws 1949, c. 256, § 412, p. 830; Laws 1951, c. 290, § 2, p. 959; Laws 1953, c. 314, § 1, p. 1041; Laws 1955, c. 325, § 4, p. 1009; Laws 1990, LB 1090, § 35; Laws 1993, LB 348, § 46; R.S.1943, (1994), § 79-1423; Laws 1996, LB 900, § 416.

**79-743 Vocational school, department, or course; establishment; reimbursement; when.**

(1) Any school board or board of education may establish, with the approval of the State Board of Vocational Education, a vocational school, department, or course providing instruction necessary for the preparation of individuals for paid or unpaid employment in occupations not requiring a baccalaureate or advanced degree and vocational student organization activities which function as an integral part of the school, department, or course.

(2) Vocational schools, departments, or courses, when approved by the State Board of Vocational Education, shall be reimbursed in accordance with the terms specified annually in the contracts between the local board and the state board.

**Source:** Laws 1919, c. 267, § 4, p. 1069; C.S.1922, § 6563; C.S.1929, § 79-2213; R.S.1943, § 79-2210; Laws 1949, c. 256, § 417, p. 832; Laws 1951, c. 290, § 6, p. 961; Laws 1955, c. 325, § 5, p. 1009; Laws 1990, LB 1090, § 36; R.S.1943, (1994), § 79-1428; Laws 1996, LB 900, § 417; Laws 1997, LB 347, § 19.

**79-744 State Board of Vocational Education; additional duties.**

The State Board of Vocational Education shall (1) cooperate with the boards authorized by sections 79-738 to 79-744 to establish vocational schools, departments, or courses, (2) cooperate with the United States Department of Education in the administration of federal legislation relating to vocational education and the Nebraska State Plan for Vocational Education, (3) administer the funds provided by the federal government under such federal legislation, by the State of Nebraska, and by donations or contributions for the promotion of vocational education in the public schools of Nebraska, (4) appoint staff members to administer such federal legislation and sections 79-738 to 79-744 for the State of Nebraska, (5) fix the compensation of such personnel and pay such compensation and other necessary expenses of administration from funds appropriated by the Legislature or available federal funds, (6) make studies and investigations relative to vocational education, (7) promote and aid in the establishment of vocational schools, departments, or courses in communities

giving training in such subjects and cooperate with local boards in the maintenance of such schools, departments, or courses, (8) prescribe qualifications and provide for the certification of teachers and supervisors of vocational education and related subjects, (9) cooperate in the maintenance of postsecondary training courses for the preparation of teachers and supervisors of vocational education and related subjects or maintain such courses under its own direction and control, and (10) establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers.

**Source:** Laws 1919, c. 267, § 5, p. 1070; C.S.1922, § 6564; C.S.1929, § 79-2214; R.S.1943, § 79-2211; Laws 1949, c. 256, § 418, p. 833; Laws 1951, c. 290, § 7, p. 962; Laws 1953, c. 313, § 2, p. 1039; Laws 1955, c. 325, § 6, p. 1010; Laws 1978, LB 756, § 51; Laws 1980, LB 724, § 1; Laws 1990, LB 1090, § 37; Laws 1991, LB 663, § 43; Laws 1993, LB 348, § 47; Laws 1993, LB 239, § 5; R.S.1943, (1994), § 79-1429; Laws 1996, LB 900, § 418; Laws 1997, LB 347, § 20.

#### **79-745 Vocational educational needs; legislative findings.**

The Legislature finds that the schools in this state may best serve their students' vocational educational needs by participating in cooperative agreements with other school districts in order to share resources and programs. The Legislature further finds that recent technology, including computer developments, are expanding rapidly and students should be exposed at the elementary and secondary school levels to such technological advances in order to complete their education and prepare them for the future.

**Source:** Laws 1983, LB 207, § 1; R.S.1943, (1994), § 79-1435.01; Laws 1996, LB 900, § 419.

#### **79-746 Interdistrict school agreements; authorized.**

Any public school district in this state may enter into an agreement with any other public school district in this state to provide and share vocational educational programs, particularly programs involving recent technological developments such as electronics, computer science, and communications. The agreement's terms shall be approved by the school board or board of education of each school district participating in the agreement. The terms of the agreement shall include, but not be limited to, the method of sharing or hiring personnel, purchasing equipment and materials, and course curriculum.

The State Board of Vocational Education shall be apprised of all interdistrict school agreements at the time such agreements are executed.

**Source:** Laws 1983, LB 207, § 2; R.S.1943, (1994), § 79-1435.02; Laws 1996, LB 900, § 420.

#### **79-747 Interdistrict school agreement; tax levy.**

In order to finance each school district's participation in the interdistrict school agreement pursuant to sections 79-745 to 79-747, a school district may levy a tax, in addition to any tax levy for general or other school purposes, not to exceed ten cents on each one hundred dollars upon the taxable value of all the taxable property in the district. The tax shall be levied, paid, and collected in the same manner as other school district taxes. Such additional tax levy shall

be used only for payment by the school district of the costs it incurs as a result of its participation in the interdistrict agreement.

**Source:** Laws 1983, LB 207, § 3; Laws 1992, LB 719A, § 194; R.S.1943, (1994), § 79-1435.03; Laws 1996, LB 900, § 421.

**Cross References**

Joint school district or learning community tax levy, see section 79-1075.

(g) SCHOOL RESTRUCTURING

**79-748 Legislative findings and intent.**

(1) The Legislature finds and declares that:

(a) Global economic competition is making new demands upon the school system of the state;

(b) The competitiveness of the United States in the new global economy will require that schools effectively educate all students and prepare them to develop the capacity to learn new skills and tasks quickly and to apply this knowledge in creative and imaginative ways, in novel contexts, and in collaboration with others;

(c) The need to fundamentally restructure education to meet the challenges and opportunities of a constantly changing technological economy is recognized and endorsed by such diverse groups as the Committee for Economic Development, an organization of some eighty chief executive officers of American corporations, the Education Commission of the States, the National Education Association, the American Federation of Teachers, and the National Governors' Association; and

(d) The restructuring of the school system is a long-term, evolving process with the principal goal being to develop a system that ensures that all students learn to use their minds well as a result of their education.

(2) It is the intent of the Legislature to stimulate ideas and visions that go beyond the traditional models of schooling and to encourage the development of public-private partnerships in establishing and supporting reform in education.

**Source:** Laws 1990, LB 960, § 1; R.S.1943, (1994), § 79-4,225; Laws 1996, LB 900, § 422; Laws 1997, LB 347, § 21.

**79-749 Repealed. Laws 1997, LB 347, § 59.**

**79-750 Rule, regulation, or policy; waiver authorized.**

The State Board of Education may waive any rule or regulation of the State Department of Education and the board of education of each participating school may waive any school board policy which has been identified as a barrier in any school restructuring plan upon a showing that such rule, regulation, or policy will be a substantial impediment to success of the plan.

**Source:** Laws 1990, LB 960, § 3; R.S.1943, (1994), § 79-4,227; Laws 1996, LB 900, § 424.

(h) NEBRASKA SCHOOLS ACCOUNTABILITY COMMISSION

**79-751 Repealed. Laws 1997, LB 347, § 59.**

**79-752 Repealed. Laws 1997, LB 347, § 59.**

**79-753 Repealed. Laws 1997, LB 347, § 59.**

**79-754 Repealed. Laws 1997, LB 347, § 59.**

**79-755 Repealed. Laws 1997, LB 347, § 59.**

**79-756 Repealed. Laws 2013, LB 410, § 24.**

(i) QUALITY EDUCATION ACCOUNTABILITY ACT

**79-757 Act, how cited.**

Sections 79-757 to 79-762 shall be known and may be cited as the Quality Education Accountability Act.

**Source:** Laws 1998, LB 1228, § 1; Laws 2000, LB 812, § 1; Laws 2007, LB653, § 1; Laws 2011, LB637, § 25; Laws 2012, LB870, § 1; Laws 2014, LB438, § 1.  
Effective date April 10, 2014.

**79-758 Terms, defined.**

For purposes of the Quality Education Accountability Act:

(1) Assessment means the process of measuring student achievement and progress on state-adopted standards;

(2) Assessment instrument means a test aligned with state standards that is designed to measure student progress and achievement; and

(3) National assessment instrument means a nationally norm-referenced test developed and scored by a national testing service.

**Source:** Laws 2007, LB653, § 2; Laws 2008, LB1157, § 1.

**79-759 Pilot project; standard college admission test; report.**

Beginning with the 2011-12 school year, the State Department of Education may implement a pilot project for the districtwide administration of a standard college admission test, selected by the State Board of Education, to students in the eleventh grade attending a public school in a participating school district to determine if such test (1) would improve the college-going rate and career readiness of Nebraska students and (2) could be utilized as the assessment for the one grade in high school as required under section 79-760.03. Participation by school districts in the pilot project shall be voluntary and shall be subject to the approval of the board. On or before September 1, 2012, and on or before September 1 each year thereafter through 2016, the department shall report to the Governor, the Clerk of the Legislature, and the chairperson of the Education Committee of the Legislature on the pilot project. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically. The project shall continue through school year 2015-16. The project shall be paid for with funds from the Education Innovation Fund as provided in section 9-812.

**Source:** Laws 2011, LB637, § 26; Laws 2012, LB782, § 151; Laws 2014, LB967, § 7.  
Effective date April 3, 2014.

**79-760 Repealed. Laws 2012, LB 870, § 7.****79-760.01 Academic content standards; State Board of Education; duties.**

The State Board of Education shall adopt measurable academic content standards for at least the grade levels required for statewide assessment pursuant to section 79-760.03. The standards shall cover the subject areas of reading, writing, mathematics, science, and social studies. The standards adopted shall be sufficiently clear and measurable to be used for testing student performance with respect to mastery of the content described in the state standards. The State Board of Education shall develop a plan to review and update standards for each subject area every five years. The state board shall review and update the standards in reading by July 1, 2009, the standards in mathematics by July 1, 2010, and the standards in all other subject areas by July 1, 2013. The state board plan shall include a review of commonly accepted standards adopted by school districts.

**Source:** Laws 2000, LB 812, § 2; Laws 2007, LB653, § 5; Laws 2008, LB1157, § 2.

**79-760.02 Academic content standards; school districts, educational service units, and learning communities; duties.**

In accordance with timelines that are adopted by the State Board of Education, but in no event later than one year following the adoption or modification of state standards, each school district shall adopt measurable quality academic content standards in the subject areas of reading, writing, mathematics, science, and social studies. The standards may be the same as, or may be equal to or exceed in rigor, the measurable academic content standards adopted by the state board and shall cover at least the same grade levels. School districts may work collaboratively with educational service units, with learning communities, or through interlocal agreements to develop such standards. Educational service units and learning communities shall develop a composite set of standards shared by member school districts.

**Source:** Laws 2000, LB 812, § 3; Laws 2007, LB653, § 6; Laws 2008, LB1157, § 3.

**79-760.03 Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties; technical advisory committee; terms; expenses.**

(1) For school year 2009-10 and each school year thereafter, the State Board of Education shall implement a statewide system for the assessment of student learning and for reporting the performance of school districts and learning communities pursuant to this section. The assessment and reporting system shall measure student knowledge of subject matter materials covered by measurable academic content standards selected by the state board.

(2) The state board shall adopt a plan for an assessment and reporting system and implement and maintain the assessment and reporting system according to such plan. The plan shall be submitted annually to the State Department of Education, the Governor, the chairperson of the Education Committee of the Legislature, and the Clerk of the Legislature. The plan submitted to the committee and the Clerk of the Legislature shall be submitted electronically. The state board shall select grade levels for assessment and reporting required

pursuant to subsections (4) through (7) of this section. The purposes of the system are to:

(a) Determine how well public schools are performing in terms of achievement of public school students related to the state academic content standards;

(b) Report the performance of public schools based upon the results of state assessment instruments and national assessment instruments;

(c) Provide information for the public and policymakers on the performance of public schools; and

(d) Provide for the comparison among Nebraska public schools and the comparison of Nebraska public schools to public schools elsewhere.

(3) The Governor shall appoint a technical advisory committee to review the statewide assessment plan and state assessment instruments developed under the Quality Education Accountability Act. The technical advisory committee shall consist of three nationally recognized experts in educational assessment and measurement, one administrator from a school in Nebraska, and one teacher from a school in Nebraska. The members shall serve terms of three years, except that two of the members shall be appointed for initial terms of two 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. The committee shall advise the Governor, the state board, and the State Department of Education on the development of statewide assessment instruments and the statewide assessment plan. The appointments to the committee shall be confirmed by the Legislature.

(4) The state board shall prescribe a statewide assessment of writing that relies on writing samples in each of three grades selected by the state board. Each year at least one of the three selected grades shall participate in the statewide writing assessment with each selected grade level participating at least once every three years.

(5) For school year 2009-10 and for each school year thereafter, the state board shall prescribe a statewide assessment of reading. The statewide assessment of reading shall include assessment instruments for each of the grade levels three through eight and for one grade in high school and standards adopted by the state board pursuant to section 79-760.01.

(6) For no later than school year 2010-11 and for each school year thereafter, the state board shall prescribe a statewide assessment of mathematics. The statewide assessment of mathematics shall include assessment instruments for each of the grade levels three through eight and for one grade in high school and standards adopted by the state board pursuant to section 79-760.01. If no statewide assessment of mathematics is administered in school year 2009-10, school districts shall report mathematics assessment results in the same manner as such information was reported in school year 2008-09.

(7) For no later than school year 2011-12 and each school year thereafter, the state board shall prescribe a statewide assessment of science. The statewide assessment of science shall include assessment instruments for each of the grade levels selected by the state board and standards adopted by the state board pursuant to section 79-760.01. The grade levels shall include at least one grade in elementary school, one grade in middle school or junior high school, and one grade in high school.

(8) The department shall conduct studies to verify the technical quality of assessment instruments and demonstrate the comparability of assessment instrument results required by the act. The department shall annually report such findings to the Governor, the Legislature, and the state board. The report submitted to the Legislature shall be submitted electronically.

(9) The state board shall recommend national assessment instruments for the purpose of national comparison. Each school district shall report individual student data for scores and sub-scores according to procedures established by the state board and the department pursuant to section 79-760.05.

(10) The aggregate results of assessment instruments and national assessment instruments shall be reported by the district on a building basis to the public in that district, to the learning community coordinating council if such district is a member of a learning community, and to the department. Each learning community shall also report the aggregate results of any assessment instruments and national assessment instruments to the public in that learning community and to the department. The department shall report the aggregate results of any assessment instruments and national assessment instruments on a learning community, district, and building basis as part of the statewide assessment and reporting system.

(11)(a) The assessment and reporting plan shall:

(i) Provide for the confidentiality of the results of individual students; and

(ii) Include all public schools and all public school students.

(b) The state board shall adopt criteria for the inclusion of students with disabilities, students entering the school for the first time, and students with limited English proficiency.

The department may determine appropriate accommodations for the assessment of students with disabilities or any student receiving special education programs and services pursuant to section 79-1139. Alternate academic achievement standards in reading, mathematics, and science and alternate assessment instruments aligned with the standards may be among the accommodations for students with severe cognitive disabilities.

(12) The state board may select additional grade levels and additional subject areas for statewide assessment instruments to comply with federal requirements.

(13) The state board shall not require school districts to administer assessments or assessment instruments other than as prescribed by the act.

(14) The state board shall appoint committees of teachers, from each appropriate subject area, and administrators to assist in the development of statewide assessment instruments required by the act.

**Source:** Laws 2007, LB653, § 4; Laws 2008, LB1157, § 4; Laws 2012, LB782, § 152.

**79-760.04 Repealed. Laws 2012, LB 870, § 7.**

**79-760.05 Statewide system for tracking individual student achievement; State Board of Education; duties; school districts; provide data; analysis and reports.**

(1) The State Board of Education shall implement a statewide system for tracking individual student achievement, using the student identifier system of

the State Department of Education, that can be aggregated to track student progress by demographic characteristics, including, but not limited to, race, poverty, high mobility, attendance, and limited English proficiency, on available measures of student achievement which include, but need not be limited to, national assessment instruments, state assessment instruments, and the indicators used in the accountability system required pursuant to section 79-760.06. Such a system shall be designed so as to aggregate student data by available educational input characteristics, which may include class size, teacher education, teacher experience, special education, early childhood programs, federal programs, and other targeted education programs. School districts shall provide the department with individual student achievement data from assessment instruments required pursuant to section 79-760.03 in order to implement the statewide system.

(2) The department shall annually analyze and report on student achievement for the state, each school district, each public school, and each learning community aggregated by the demographic characteristics described in subsection (1) of this section. The department shall report the findings to the Governor, the Legislature, school districts, educational service units, and each learning community. The report submitted to the Legislature shall be submitted electronically. Such analysis shall include aggregated data that would indicate differences in achievement due to available educational input characteristics described in subsection (1) of this section. Such analysis shall include indicators of progress toward state achievement goals for students in poverty, limited English proficient students, and highly mobile students.

**Source:** Laws 2007, LB653, § 8; Laws 2008, LB1157, § 5; Laws 2011, LB333, § 5; Laws 2012, LB782, § 153; Laws 2012, LB870, § 3.

**79-760.06 Accountability system; combine multiple indicators; State Department of Education; powers; duties; designation of priority schools.**

(1) On or before August 1, 2012, the State Board of Education shall establish an accountability system to be used to measure the performance of individual public schools and school districts. The accountability system shall combine multiple indicators, including, but not limited to, graduation rates, student growth and student improvement on the assessment instruments provided in section 79-760.03, and other indicators of the performance of public schools and school districts as established by the state board.

(2) Beginning with the reporting of data from school year 2014-15, the indicators selected by the state board for the accountability system shall be combined into a school performance score and district performance score.

The state board shall establish levels of performance based upon school performance scores and district performance scores in order to classify the performance of public schools and school districts beginning with the reporting of data from school year 2014-15. The state board shall designate priority schools based on such classification. Schools designated as priority schools shall be at the lowest performance level at the time of the initial priority school designation. Schools designated as priority schools shall remain priority schools until such designation is removed by the state board. No more than three schools may have a priority school designation at one time. Schools designated as priority schools shall be subject to the requirements of section 79-760.07. Progress plans for the initial schools designated as priority schools

shall be approved by the state board no later than August 1, 2016. The State Department of Education shall annually report the performance level of individual public schools and school districts as part of the statewide assessment and reporting system.

**Source:** Laws 2012, LB870, § 2; Laws 2014, LB438, § 2.  
Effective date April 10, 2014.

**79-760.07 Priority school; intervention team; members; duties; expenses; develop progress plan; contents; compliance required; review; school board; duties; Commissioner of Education; report; contents.**

(1) For each school designated as a priority school, the Commissioner of Education shall appoint an intervention team. The intervention team shall assist the school district with diagnosing issues that negatively affect student achievement in the priority school, designing and implementing strategies to address such issues through the progress plan, and developing measurable indicators of progress.

(2) The intervention team shall be composed of up to five people with the education and experience to carry out the responsibilities of the team. Any member of the intervention team may receive pay for work performed in conjunction with his or her duties as a member of such team. Such pay shall be determined and provided (a) by the State Department of Education for any member of the intervention team who is not an employee of the school district containing the priority school for which such intervention team is appointed or (b) by the school district containing the priority school for which the intervention team is appointed for any member of the intervention team who is an employee of such school district. Any member of the intervention team who is eligible to receive pay from the department pursuant to subdivision (a) of this subsection shall also be eligible for reimbursement of actual and necessary expenses incurred in carrying out his or her duties as a member of such team as provided in sections 81-1174 to 81-1177. Reimbursement of actual and necessary expenses for any member of the intervention team who is an employee of the school district containing the priority school for which the intervention team is appointed shall be provided in accordance with the policies and procedures of such school district.

(3) The intervention team, in collaboration with the priority school staff and the administration and school board of the school district with control of the priority school, shall develop a progress plan for approval by the State Board of Education. Any progress plan shall include specific actions required by the school and the district in order to remove its classification as a priority school, including any required level of progress as indicated by the measurable indicators.

(4) Compliance with progress plans shall be a requirement to maintain accreditation for any school district that contains a priority school. The state board shall annually review any progress plans and determine whether any modifications are needed. If a school has been designated as a priority school for the fifth consecutive school year, the state board shall reevaluate the progress plan to determine if (a) a significant revision of the progress plan is necessary, (b) an entirely new progress plan is developed, or (c) an alternative administrative structure is warranted.

(5) The school board of a school district containing a priority school as designated pursuant to section 79-760.06 shall provide the intervention team with full access to the priority school, priority school staff, the school district, school district staff, academic information, financial information, and any other requested information.

(6) The Commissioner of Education shall annually report to the Governor and electronically to the Clerk of the Legislature and the chairperson of the Education Committee of the Legislature on all schools designated as priority schools. The report shall include the name of the school, the grades included in the priority school designation, the name of the school district, the years for which the school was designated a priority school, a summary of the progress plan, and the level of progress as indicated by the measurable indicators.

**Source:** Laws 2014, LB438, § 3.  
Effective date April 10, 2014.

**79-761 Mentor teacher programs; State Board of Education; duties.**

The State Board of Education shall develop guidelines for mentor teacher programs in local systems in order to provide ongoing support for individuals entering the teaching profession. The mentor teacher programs shall identify criteria for selecting excellent, experienced, and qualified teachers to be participants.

**Source:** Laws 1998, LB 1228, § 5; Laws 2006, LB 1208, § 3.

**79-762 Rules and regulations.**

The State Board of Education shall adopt and promulgate rules and regulations to carry out the Quality Education Accountability Act.

**Source:** Laws 1998, LB 1228, § 6.

(j) CAREER EDUCATION PARTNERSHIP ACT

**79-763 Repealed. Laws 2009, LB 476, § 6.**

**79-764 Repealed. Laws 2009, LB 476, § 6.**

**79-765 Repealed. Laws 2009, LB 476, § 6.**

**79-766 Repealed. Laws 2009, LB 476, § 6.**

**79-767 Repealed. Laws 2009, LB 476, § 6.**

**79-768 Repealed. Laws 2009, LB 476, § 6.**

(k) LEARNING COMMUNITY FOCUS SCHOOL OR PROGRAM

**79-769 Focus programs; focus schools; magnet schools; authorized; requirements.**

(1) Any one or more member school districts of a learning community may establish one or more focus programs, focus schools, or magnet schools. If included as part of the diversity plan of a learning community, the focus school or focus program shall be eligible for a focus school and program allowance pursuant to section 79-1007.05.

(2) Focus schools, focus programs, and magnet schools may be included in pathways across member school districts pursuant to the diversity plan developed by the learning community coordinating council pursuant to section 79-2104.

(3) If multiple member school districts collaborate on a focus program, focus school, or magnet school, the school districts shall form a joint entity pursuant to the Interlocal Cooperation Act for the purpose of creating, implementing, and operating such focus program, focus school, or magnet school. The agreement creating such joint entity shall address legal, financial, and academic responsibilities and the assignment to participating school districts of students enrolled in such focus program, focus school, or magnet school who reside in nonparticipating school districts.

(4) For purposes of this section:

(a) Focus program means a program that does not have an attendance area, whose enrollment is designed so that the socioeconomic diversity of the students attending the focus program reflects as nearly as possible the socioeconomic diversity of the student body of the learning community, which has a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum, which may be housed in a building with other public school programs, and which may consist of either the complete education program for participating students or part of the education program for participating students;

(b) Focus school means a school that does not have an attendance area, whose enrollment is designed so that the socioeconomic diversity of the students attending the focus school reflects as nearly as possible the socioeconomic diversity of the student body of the learning community, which has a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum, and which is housed in a building that does not contain another public school program;

(c) Magnet school means a school having a home attendance area but which reserves a portion of its capacity specifically for students from outside the attendance area who will contribute to the socioeconomic diversity of the student body of such school and which has a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum; and

(d) Pathway means elementary, middle, and high school focus programs, focus schools, and magnet schools with coordinated curricula based on specific learning goals or teaching techniques.

**Source:** Laws 2006, LB 1024, § 57; Laws 2007, LB641, § 11; Laws 2008, LB1154, § 9; Laws 2011, LB558, § 1.

#### Cross References

Interlocal Cooperation Act, see section 13-801.

### (I) CERTIFICATE OF ATTENDANCE

**79-770 Certificate of attendance; participation in high school graduation ceremony.**

At the request of a parent or guardian, a school district shall issue a certificate of attendance to a student who receives special education services

under the Special Education Act, who has reached seventeen years of age, and who has not completed his or her individualized education plan. A school district shall allow a student who receives a certificate of attendance under this section to participate in the high school graduation ceremony of such high school with students receiving high school diplomas. A student may receive only one certificate of attendance and may participate in only one graduation ceremony based on such certificate. The receipt of a certificate of attendance pursuant to this section shall not affect a school district's obligation to continue to provide special education services to a student receiving such certificate.

This section does not preclude a student from receiving a high school diploma by meeting the school district's graduation requirements established pursuant to section 79-729 or in his or her individualized education plan or receiving a diploma of high school equivalency under section 79-730 upon completing the requirements of such section. The school district may allow a student who has previously participated in a graduation ceremony based on a certificate of attendance to participate in an additional graduation ceremony when such student receives a high school diploma.

**Source:** Laws 2008, LB1153, § 1.

Cross References

Special Education Act, see section 79-1110.

(m) NEBRASKA COMMUNITY COLLEGE DEGREE

**79-771 Nebraska community college degrees; how treated.**

For purposes of financial aid relating to postsecondary education and admission to postsecondary educational institutions, a student shall be deemed a high school graduate if he or she has obtained an associate of arts degree or an associate of science degree from a community college in Nebraska.

**Source:** Laws 2009, LB102, § 1.

(n) CENTER FOR STUDENT LEADERSHIP  
AND EXTENDED LEARNING ACT

**79-772 Act, how cited.**

Sections 79-772 to 79-775 shall be known and may be cited as the Center for Student Leadership and Extended Learning Act.

**Source:** Laws 2009, LB476, § 1.

**79-773 Legislative findings.**

(1) The Legislature finds that:

(a) Since 1928, Nebraska students have benefited from participation in career education student organizations such as Nebraska FFA, Family Career and Community Leaders of America (FCCLA), Future Business Leaders of America (FBLA), Skills USA, Nebraska DECA, and Health Occupations Students of America (HOSA);

(b) Research conducted in 2007 by the National Research Center for Career and Technical Education has documented a positive association between career education student organizations participation and academic motivation, aca-

demic engagement, grades, career self-efficacy, college aspirations, and employability skills;

(c) Long-term sustainability of the state associations of career education student organizations has a positive impact on Nebraska students and is in the best interests of the economic well-being of the State of Nebraska;

(d) Students in Nebraska schools should have opportunities to acquire academic, technical, and employability knowledge and skills needed to meet the demands of a global economy;

(e) Students benefit from the opportunities provided by career education student organizations to develop and demonstrate leadership skills that prepare them for civic, economic, and entrepreneurial leadership roles;

(f) Students benefit from engaging in extended-learning experiences outside their normal classrooms that allow them to apply their knowledge and skill in real-world situations;

(g) There is a need to establish and expand strategies and programs that enable young people to be college-ready and career-ready, build assets, and remain as productive citizens in their communities; and

(h) There is a need to establish a statewide structure that supports existing and emerging curriculum and program offerings with student leadership development opportunities and experiences.

(2) The Legislature recognizes that Nebraska must provide opportunities to educate young people with leadership and employability skills to (a) meet the needs of business and industry and remain economically viable, (b) educate and nurture future entrepreneurs for successful business ventures to diversify and strengthen our economic base, (c) foster rewarding personal development experiences that involve students in their communities and encourage them to return to their communities after completing postsecondary education, and (d) invest in and support the leadership development of our future state and community civic leaders.

**Source:** Laws 2009, LB476, § 2.

### **79-774 Terms, defined.**

For purposes of the Center for Student Leadership and Extended Learning Act:

(1) Career and technical education means educational programs that support the development of knowledge and skill in the following areas: Agriculture, food, and natural resources; architecture and construction; arts, audiovisual, technology, and communication; business management and administration; education and training; finance; government and public administration; health science; hospitality and tourism; human services; information technology; law, public safety, and security; marketing; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics;

(2) Career education student organization means an organization for individuals enrolled in a career and technical education program that engages career and technical education activities as an integral part of the instructional program; and

(3) Extended learning means activities and programs that expand opportunities for students to participate in educational activities outside the normal classroom.

**Source:** Laws 2009, LB476, § 3.

**79-775 Purpose of act; Center for Student Leadership and Extended Learning; duties.**

The purpose of the Center for Student Leadership and Extended Learning Act is to provide state support for establishing and maintaining within the State Department of Education the Center for Student Leadership and Extended Learning. The center shall provide ongoing financial and administrative support for state leadership and administration of Nebraska career education student organizations, create and coordinate opportunities for students to participate in educational activities outside the normal classroom, and partner with state and local organizations to share research and identify best practices that can be disseminated to schools and community organizations.

**Source:** Laws 2009, LB476, § 4.

(o) POLICY TO SHARE STUDENT DATA

**79-776 State Board of Education; policy to share student data; duties.**

The State Board of Education shall enter into memoranda of understanding on or before September 1, 2010, with the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the board of governors of each community college area to adopt a policy to share student data. At a minimum, the policy shall ensure that the exchange of information is conducted in conformance with the requirements of the federal Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g, and all federal regulations and applicable guidelines adopted in accordance with such act, as such act, regulations, and guidelines existed on January 1, 2010.

**Source:** Laws 2010, LB1071, § 7.

(p) CAREER ACADEMY

**79-777 Career academy; establishment and operation; duties; funding; department; define standards and criteria.**

(1) Any school district, with the approval of the State Department of Education, may establish and operate a career academy. The purpose of a career academy is to provide students with a career-based educational curriculum. A school district may partner with another school district, an educational service unit, a learning community, a postsecondary educational institution, or a private entity in the establishment and operation of a career academy.

(2) A career academy established pursuant to subsection (1) of this section shall:

(a) Recruit students who seek a career-based curriculum, which curriculum shall be based on criteria determined by the department;

(b) Recruit and hire instructors based on their expertise in career-based education; and

(c) Provide a rigorous academic curriculum with a transition component to prepare students for the workforce, including, but not limited to, internships, job training, and skills training.

(3) In addition to funding from the establishing school district or any of the district's partners, a career academy may also receive private donations for operating expenses.

(4) The department shall define standards and criteria for (a) the establishment, evaluation, and continuing approval of career academies, (b) career-based curriculum utilized by career academies, (c) the necessary data elements and collection of data pertaining to career academies, including, but not limited to, the number of students enrolled in a career academy and their grade levels, and (d) the establishment of advisory boards consisting of business and education representatives to provide guidance and direction for the operation of career academies.

(5) The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2012, LB870, § 4.

## ARTICLE 8 TEACHERS AND ADMINISTRATORS

### Cross References

**Education Innovation Fund**, allocations for the Excellence in Teaching Act, see section 9-812.

**Private, denominational, or parochial schools which elect not to meet accreditation or approval requirements**, persons who monitor instruction, see section 79-1601.

**Teachers' institutes and conferences**, Commissioner of Education, duties, see section 79-308.

### (a) CERTIFICATES

#### Section

- |            |  |
|------------|--|
| 79-801.    | Nebraska certificate to administer; required of administrators and supervisors.  |
| 79-802.    | Nebraska certificate or permit; prerequisite to teaching; employment of teacher aides; requirements.   |
| 79-802.01. | American Indian language teacher; requirements.  |
| 79-803.    | Certificate; extension; service in armed forces; conditions.   |
| 79-804.    | Teacher's or administrator's certificate; registration required; failure; effect.  |
| 79-805.    | Teachers or administrators without certificates; employment prohibited; effect.  |
| 79-806.    | Declaration of purpose.  |
| 79-807.    | Terms, defined.  |
| 79-808.    | Teachers and administrators; certificates and permits; requirements; board; duties; advisory committees.   |
| 79-809.    | Teachers' entry-level certificates or permits; qualifications.   |
| 79-810.    | Certificates or permits; issuance by Commissioner of Education; fee; disposition; contents of certificate or permit; endorsements; Certification Fund; Professional Practices Commission Fund; created; use; investment. |
| 79-811.    | Teachers' and administrators' certificates or permits; college credits submitted; certification.   |
| 79-812.    | Repealed. Laws 2003, LB 685, § 37.   |
| 79-813.    | Teachers' and administrators' certificates or permits; reciprocity; requirements.  |
| 79-814.    | Teachers' and administrators' certificates or permits; limitations on use.   |
| 79-814.01. | Criminal history record information search; denial of certificate or permit; when; costs; confidentiality.   |

## SCHOOLS

### Section

- 79-814.02. Conditional permit; when.  
79-815. Certificate; continuance in force; conversion privileges.  
79-816. Repealed. Laws 2003, LB 685, § 37.

### (b) EMPLOYMENT CONTRACTS

- 79-817. Schools; contract of employment; writing required.  
79-818. School board; employment of teachers and administrators; contracts; how executed; prohibitions.  
79-819. Schools; contract of employment; contents.  
79-820. Schools; contract with employees of another district, prohibited; penalty.  
79-821. Schools; violation of contract; notice; suspension of certificate.  
79-822. Administrators; employment; salary; contract; term.  
79-823. Repealed. Laws 1997, LB 347, § 59.

### (c) TENURE

- 79-824. Terms, defined.  
79-825. Part-time certificated employee; become permanent employee; formula; reduction in force; effect.  
79-826. Certificated employee; disciplinary action; superintendent; powers; procedures.  
79-827. Certificated employee; contract cancellation or amendment; reasons; procedures.  
79-828. Probationary certificated employee; probationary period; evaluation; contract amendment or nonrenewal; procedure.  
79-829. Permanent certificated employee; contract amendment or termination; reasons.  
79-830. Permanent certificated employee; evidence of professional growth required.  
79-831. Certificated employee; contract amendment, termination, nonrenewal, or cancellation; notice; hearing.  
79-832. Formal due process hearing; employee's rights; how conducted; school board decision.  
79-833. Error proceedings; jurisdiction of court.  
79-834. Informal hearing; when held; procedures.  
79-835. Probationary certificated employee; superintendent; school board; special procedures applicable.  
79-836. School board; additional sanctions authorized; when.  
79-837. School board; subpoena power.  
79-838. School board; grant leave of absence; procedures; rights.  
79-839. Certificated employees; assignment rights.  
79-840. Class IV or Class V school district; hearing officer; use authorized.  
79-841. Class IV or V school district; hearing officer; selection.  
79-842. Class IV or V school district; hearing officer; procedure; costs.  
79-843. Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision.  
79-844. Teachers and school nurses; contract; minimum standard.  
79-845. Department of Correctional Services; Department of Health and Human Services; contract with teaching staff; probationary period.

### (d) REDUCTION IN FORCE

- 79-846. Reduction-in-force policy; adopt; requirements.  
79-847. Reduction in force; board of education and school district administration; duties.  
79-848. Reduction in force; employee; contract terminated; effect; recall; rights.  
79-849. Reduction in force; noncompliance with federal or state law; how treated.

### (e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

- 79-850. Terms, defined.  
79-851. Teachers; status rights.  
79-852. Collective-bargaining agreement; continued; effect.  
79-853. City of second class or village; merger with city of primary or metropolitan class; rights of teachers and employees preserved.

## **TEACHERS AND ADMINISTRATORS**

### Section

- 79-854. Reduction in force; Retirement Incentive Plan; Staff Development Assistance; continued employment; notification; limitation.
- 79-855. Retirement Incentive Plan; eligibility; benefit; costs; allocation.
- 79-856. Staff Development Assistance; eligibility; agreement; contents; costs; allocation.
- 79-857. Allocation of certificated employees; procedure.
- 79-858. Other agreements; responsibility.

### (f) PROFESSIONAL PRACTICES COMMISSION

- 79-859. Professional Practices Commission; declaration.
- 79-860. Terms, defined.
- 79-861. Professional Practices Commission; members; appointment; qualifications; terms; compensation; expenses; meetings; chairperson; quorum.
- 79-862. Commission; clerk; duties; additional personnel.
- 79-863. Commission; clerk; salary; expenses.
- 79-864. Commission; court reporter; duties; how paid.
- 79-865. Commission; legal counsel; duties.
- 79-866. Board; powers and duties.
- 79-867. Teacher's or administrator's certificate; revocation; suspension; effect.
- 79-868. Board; standards violation; investigations; procedure.
- 79-869. Commission and board; rules and regulations.
- 79-870. Commissioner; commission; board; witnesses; subpoena.
- 79-871. Commission; budget; adopt; costs and expenses; payment.

### (g) PROFESSIONAL OR LABOR ORGANIZATIONS

- 79-872. Teacher or administrator; professional or labor organization; deduction from wages.
- 79-873. Deduction from wages; authorization; form.
- 79-874. Deductions; school district; liability.

### (h) STUDENT TEACHER OR INTERN

- 79-875. Student teacher or intern, defined.
- 79-876. Student teacher or intern; protection; rules and regulations; comply.
- 79-877. Student teacher or intern; responsibilities and duties.
- 79-878. Student teacher or intern; terms, defined.

### (i) PROFESSIONAL STAFF DEVELOPMENT PROGRAM

- 79-879. Repealed. Laws 1997, LB 347, § 59.

### (j) HELP EDUCATION LEAD TO PROSPERITY ACT

- 79-880. Repealed. Laws 1996, LB 700, § 18.
- 79-881. Repealed. Laws 1996, LB 700, § 18.
- 79-882. Repealed. Laws 1996, LB 700, § 18.
- 79-883. Repealed. Laws 1996, LB 700, § 18.
- 79-884. Repealed. Laws 1996, LB 700, § 18.
- 79-885. Repealed. Laws 1996, LB 700, § 18.
- 79-886. Repealed. Laws 1996, LB 700, § 18.
- 79-887. Repealed. Laws 1996, LB 700, § 18.
- 79-888. Repealed. Laws 1996, LB 700, § 18.
- 79-889. Repealed. Laws 1996, LB 700, § 18.
- 79-890. Repealed. Laws 1996, LB 700, § 18.
- 79-891. Repealed. Laws 1996, LB 700, § 18.
- 79-892. Repealed. Laws 1996, LB 700, § 18.

### (k) INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

- 79-893. Repealed. Laws 2003, LB 685, § 37.
- 79-894. Repealed. Laws 2003, LB 685, § 37.
- 79-895. Repealed. Laws 2003, LB 685, § 37.

## SCHOOLS

### Section

#### (l) MISCELLANEOUS

- 79-896. Teachers; applicants; inquiries concerning religious affiliation prohibited.  
79-897. Teachers; inquiries concerning religious affiliation; violations; penalty.  
79-898. Public schools; religious garments; wearing by teachers prohibited; penalty.  
79-899. Public schools; religious garb prohibited; enforcement; violation; penalty.  
79-8,100. Teachers; solicitation by agents or salespersons prohibited; exceptions.  
79-8,101. Teachers; solicitation by agents or salespersons; violation; penalty.  
79-8,102. Repealed. Laws 2001, LB 797, § 55.  
79-8,103. Repealed. Laws 2001, LB 797, § 55.  
79-8,104. Repealed. Laws 2001, LB 797, § 55.  
79-8,105. Repealed. Laws 2001, LB 797, § 55.  
79-8,106. Epidemics; teachers' salaries; duty to pay.  
79-8,107. Teachers; lunch period; exception.  
79-8,108. Teachers and employees; pledge; form.  
79-8,109. Teacher, administrator, or full-time employee; personnel file; access; written response; attach.  
79-8,110. Class I school district; teachers; periodic report required; contents.

#### (m) CRIMINAL HISTORY RECORD INFORMATION

- 79-8,111. Repealed. Laws 2003, LB 685, § 37.  
79-8,112. Repealed. Laws 2003, LB 685, § 37.  
79-8,113. Repealed. Laws 2003, LB 685, § 37.  
79-8,114. Repealed. Laws 2003, LB 685, § 37.  
79-8,115. Repealed. Laws 2003, LB 685, § 37.  
79-8,116. Repealed. Laws 2003, LB 685, § 37.  
79-8,117. Repealed. Laws 2003, LB 685, § 37.

#### (n) TEACHER SALARY TASK FORCE

- 79-8,118. Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.  
79-8,119. Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.  
79-8,120. Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.  
79-8,121. Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.  
79-8,122. Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.  
79-8,123. Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.

#### (o) MASTER TEACHER PROGRAM ACT

- 79-8,124. Act, how cited.  
79-8,125. Master Teacher Program; created; purpose.  
79-8,126. Terms, defined.  
79-8,127. Annual salary bonus.  
79-8,128. Master teacher status.  
79-8,129. Master Teacher Program Fund; created; use; investment.  
79-8,130. Registration award.  
79-8,131. Rules and regulations.

#### (p) EXCELLENCE IN TEACHING ACT

- 79-8,132. Act, how cited.  
79-8,133. Attracting Excellence to Teaching Program; created; terms, defined.  
79-8,134. Attracting Excellence to Teaching Program; purposes.  
79-8,135. Attracting Excellence to Teaching Program; administration; eligible students.  
79-8,136. Transferred to section 79-8,137.05.  
79-8,137. Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.  
79-8,137.01. Enhancing Excellence in Teaching Program; created; terms, defined.  
79-8,137.02. Enhancing Excellence in Teaching Program; purposes.  
79-8,137.03. Enhancing Excellence in Teaching Program; administration; eligible student; loans.  
79-8,137.04. Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.

## Section

79-8,137.05. Excellence in Teaching Cash Fund; created; use; investment.

79-8,138. Repayment tracking.

79-8,139. Reports.

79-8,140. Rules and regulations.

## (q) TEACHER CORPS AMERICORPS EDUCATION AWARD PROGRAM

79-8,141. Teacher Corps AmeriCorps Education Award Program; duties; legislative intent.

## (a) CERTIFICATES

**79-801 Nebraska certificate to administer; required of administrators and supervisors.**

All persons holding the official title of (1) superintendent of schools, (2) principal or supervisor of an accredited school, or (3) supervisor of any special subjects or subject in which such persons actually supervise the work of other teachers in that subject or those subjects shall hold a Nebraska certificate to administer.

**Source:** Laws 1937, c. 184, § 3, p. 728; C.S.Supp.,1941, § 79-1303; R.S.1943, § 79-1329; Laws 1949, c. 256, § 329, p. 801; Laws 1957, c. 355, § 18, p. 1212; R.S.1943, (1994), § 79-1229; Laws 1996, LB 900, § 431; Laws 2003, LB 685, § 4.

## Cross References

Elementary school coordinator for Class VI school district, certificate required, see section 79-717.

Private, denominational, or parochial schools which elect not to meet accreditation or approval requirements, persons who monitor instruction, see section 79-1601.

**79-802 Nebraska certificate or permit; prerequisite to teaching; employment of teacher aides; requirements.**

(1) Except as provided in subsection (2) of this section, no person shall be employed to teach in any public, private, denominational, or parochial school in this state who does not hold a valid Nebraska certificate or permit issued by the Commissioner of Education legalizing him or her to teach the grade or subjects to which elected.

(2) Any person who holds a valid certificate or permit to teach issued by another state may be employed as a substitute teacher in any public, private, denominational, or parochial school in this state for not more than ten working days if he or she begins the application process, on the first employment day, for a Nebraska substitute teacher's certificate and the issuance of such certificate is pending.

(3) Public, private, denominational, or parochial schools in the state may employ persons who do not hold a valid Nebraska teaching certificate or permit issued by the Commissioner of Education to serve as aides to a teacher or teachers. Such teacher aides may not assume any teaching responsibilities. A teacher aide may be assigned duties which are nonteaching in nature if the employing school has assured itself that the aide has been specifically prepared for such duties, including the handling of emergency situations which might arise in the course of his or her work.

**Source:** Laws 1925, c. 182, § 7, p. 476; C.S.1929, § 79-1307; R.S.1943, § 79-1333; Laws 1949, c. 256, § 333, p. 802; Laws 1957, c. 355, § 19, p. 1212; Laws 1965, c. 515, § 4, p. 1638; Laws 1969, c. 726,

§ 1, p. 2760; Laws 1988, LB 802, § 22; Laws 1995, LB 123, § 1; R.S.Supp.,1995, § 79-1233; Laws 1996, LB 900, § 432; Laws 1997, LB 347, § 23.

**Cross References**

**Private, denominational, or parochial schools which elect not to meet accreditation or approval requirements**, persons who monitor instruction, see section 79-1601.

**Teacher, disqualification as school board member**, see section 79-544.

**Teacher aides**, qualifications and supervision, see section 79-1154.

Possession of certificate is a necessary prerequisite to continue employment as teacher. *Greer v. Chelewski*, 162 Neb. 450, 76 N.W.2d 438 (1956).

Teacher's contract was invalid where teacher had no certificate. *Kuhl v. School District No. 76 of Wayne County*, 155 Neb. 357, 51 N.W.2d 746 (1952).

**79-802.01 American Indian language teacher; requirements.**

(1) Teaching American Indian languages is essential to the proper education of American Indian children. School districts and postsecondary educational institutions may employ approved American Indian language teachers to teach their native language. For purposes of this section, approved American Indian language teacher means a teacher who has passed the tribe's written and oral approval test.

(2) Approved American Indian language teachers that do not also have a Nebraska teaching certificate shall not teach any subject other than the American Indian language they are approved to teach by the tribe.

(3) Each tribe shall develop both a written and an oral test that must be successfully completed in order to determine that a teacher is approved to teach the tribe's native language. When developing such approval tests, the tribe shall include, but not be limited to, which dialects will be used, whether it will standardize its writing system, and how the teaching methods will be evaluated in the classroom. The teacher approval tests shall be administered at a community college or state college.

**Source:** Laws 1999, LB 475, § 1.

**79-803 Certificate; extension; service in armed forces; conditions.**

The Commissioner of Education may extend the term of the certificate of any person who has served in the armed forces of the United States and whose certificate was in force on the day of induction or the spouse of such person. This extension shall be equal in length of time to the total number of months which intervene between the date of entrance into the military service and the date of discharge therefrom. There shall be no fee for this service. Each person who applies for an extension of the term of his or her certificate shall furnish the Commissioner of Education proper evidence of service in the armed forces and of sound physical and mental health at the time he or she applies for such extension.

**Source:** Laws 1945, c. 220, § 1, p. 657; R.S.Supp.,1947, § 79-1335.01; Laws 1949, c. 256, § 336, p. 803; Laws 1951, c. 287, § 1, p. 954; Laws 1971, LB 802, § 3; R.S.1943, (1994), § 79-1236; Laws 1996, LB 900, § 433; Laws 1999, LB 813, § 18.

**79-804 Teacher's or administrator's certificate; registration required; failure; effect.**

(1) Each teacher or administrator shall register his or her certificate with the public, private, denominational, or parochial school in which the teacher or

administrator is employed. The superintendent or administrator of the school shall endorse upon the certificate that it has been registered and the date of registration. Such registration shall be without fee. No employment of a teacher or administrator shall be valid until the certificate is so registered. On or before September 15 of each year, the public, private, denominational, and parochial schools shall file with the State Department of Education a fall personnel report which shall specify the names of all individuals employed by the school who are required by law to hold a certificate and such other information as the Commissioner of Education directs. The superintendent or administrator of the school shall transmit within ten days to the State Department of Education the name of the teacher or administrator to be employed, together with the position to which employed, if the teacher or administrator is employed after the submission of the fall personnel report. The Commissioner of Education shall certify to the school the name of any teacher or administrator who has not been issued a certificate or given evidence of application to the State Department of Education and qualification for a certificate or permit. The teacher or administrator shall not be reimbursed for any services to the school after the date of receipt of notification by the school.

(2) The Commissioner of Education shall notify the county treasurer to withhold all school money belonging to any district employing an uncertificated teacher or administrator until the teacher or administrator has obtained a certificate or has been dismissed by the board employing such teacher or administrator. The county treasurer shall withhold such money.

**Source:** Laws 1925, c. 181, § 1, p. 470; C.S.1929, § 79-1310; R.S.1943, § 79-1338; Laws 1949, c. 256, § 339, p. 803; Laws 1959, c. 410, § 1, p. 1376; Laws 1961, c. 408, § 1, p. 1225; Laws 1971, LB 802, § 4; R.S.1943, (1994), § 79-1239; Laws 1996, LB 900, § 434; Laws 1999, LB 272, § 87.

Before beginning to teach, teacher is required to register teacher's certificate. Johnson v. School Dist. No. 3 of Clay County, 168 Neb. 547, 96 N.W.2d 623 (1959).

Recovery was denied where teacher did not hold proper certificate. Kuhl v. School District No. 76 of Wayne County, 155 Neb. 357, 51 N.W.2d 746 (1952).

Where teacher's certificate is not registered, contract of employment is invalid. Zevin v. School Dist. No. 11 of City of Cozad, 144 Neb. 100, 12 N.W.2d 634 (1944).

### **79-805 Teachers or administrators without certificates; employment prohibited; effect.**

The school board or board of education shall be personally liable for all public money paid to teachers or administrators who are not qualified under sections 79-806 to 79-815. A teacher or administrator violating such sections shall not recover any money for services while teaching during the time that such contract and certificate are invalid. Any person having knowledge of the employment by a school district of an uncertified teacher or administrator may prefer charges against the board.

**Source:** Laws 1925, c. 181, § 2, p. 470; C.S.1929, § 79-1311; R.S.1943, § 79-1339; Laws 1949, c. 256, § 340, p. 804; Laws 1965, c. 515, § 5, p. 1638; Laws 1971, LB 802, § 5; Laws 1988, LB 802, § 23; R.S.1943, (1994), § 79-1240; Laws 1996, LB 900, § 435; Laws 2003, LB 685, § 5.

Teacher cannot recover for services rendered during time that contract and certificate are invalid. Johnson v. School Dist. No. 3 of Clay County, 168 Neb. 547, 96 N.W.2d 623 (1959).

Recovery cannot be had on contract or on quantum meruit where certificate has not been registered. Zevin v. School Dist. No. 11 of City of Cozad, 144 Neb. 100, 12 N.W.2d 634 (1944).

**79-806 Declaration of purpose.**

It is declared to be the purpose of sections 79-806 to 79-815 to provide more flexibility in the certification of qualified educators for Nebraska schools and not to decrease any requirements for certificates to teach, provide special services, and administer in Nebraska schools.

**Source:** Laws 1963, c. 491, § 1, p. 1569; Laws 1988, LB 802, § 24; R.S.1943, (1994), § 79-1247.03; Laws 1996, LB 900, § 436; Laws 2003, LB 685, § 6.

**Cross References**

**Excellence in Teaching Act**, see section 79-8,132.

This statute is merely declarative of the Legislature's purpose in enacting this series of statutes. It has been modified by deletion of part of section 79-1247.06, R.R.S.1943, which allowed completion of two years of a college program as the

maximum requirement for teaching. State ex rel. Douglas v. Faith Baptist Church of Louisville, 207 Neb. 802, 301 N.W.2d 571 (1981).

**79-807 Terms, defined.**

For purposes of sections 79-806 to 79-815, unless the context otherwise requires:

(1) Basic skills competency means either (a) proficiency in (i) the written use of the English language, (ii) reading, comprehending, and interpreting professional writing and other written materials, and (iii) working with fundamental mathematical computations as demonstrated by successful completion of an examination designated by the board taken by teacher education students at a standard institution of higher education or (b) successful employment experiences;

(2) Board means the State Board of Education;

(3) Certificate means an authorization issued by the commissioner to an individual who meets the qualifications to engage in teaching, providing special services, or administering in prekindergarten through grade twelve in the elementary and secondary schools in this state;

(4) Commissioner means the Commissioner of Education;

(5) Department means the State Department of Education;

(6) Human relations training means course work or employment experiences that lead to (a) an awareness and understanding of the values, lifestyles, contributions, and history of a pluralistic society, (b) the ability to recognize and deal with dehumanizing biases, including, but not limited to, sexism, racism, prejudice, and discrimination, and an awareness of the impact such biases have on interpersonal relations, (c) the ability to translate knowledge of human relations into attitudes, skills, and techniques which result in favorable experiences for students, (d) the ability to recognize the ways in which dehumanizing biases may be reflected in instructional materials, (e) respect for human dignity and individual rights, and (f) the ability to relate effectively to other individuals and to groups in a pluralistic society other than the applicant's own;

(7) Special education training means course work or employment experiences that provide an individual with the knowledge of (a) the exceptional needs of the disabilities defined under the Special Education Act, (b) the major characteristics of each disability in order to recognize its existence in children, (c) the various alternatives for providing the least restrictive environment for

children with disabilities, (d) methods of teaching children with disabilities in the regular classroom, and (e) prereferral alternatives, referral systems, multi-disciplinary team responsibilities, the individualized education plan process, and the placement process;

(8) Special services means supportive services provided to students that do not primarily involve teaching, including, but not limited to, (a) audiology, psychology, and physical or occupational therapy, (b) the coaching of extracurricular activities, and (c) subject areas for which endorsement programs are not offered by a standard institution of higher education; and

(9) Standard institution of higher education means any college or university, the teacher education programs of which are fully approved by the board or approved in another state pursuant to standards which are comparable and equivalent to those set by the board.

**Source:** Laws 1963, c. 491, § 2, p. 1569; Laws 1988, LB 802, § 25; Laws 1989, LB 250, § 1; R.S.1943, (1994), § 79-1247.04; Laws 1996, LB 900, § 437; Laws 2003, LB 685, § 7.

#### Cross References

Special Education Act, see section 79-1110.

### **79-808 Teachers and administrators; certificates and permits; requirements; board; duties; advisory committees.**

(1) The board shall establish, adopt, and promulgate appropriate rules, regulations, and procedures governing the issuance, renewal, conversion, suspension, and revocation of certificates and permits to teach, provide special services, and administer based upon (a) earned college credit in humanities, social and natural sciences, mathematics, or career and technical education, (b) earned college credit, or its equivalent in professional education, for particular teaching, special services, or administrative assignments, (c) criminal history record information if the applicant has not been a continuous Nebraska resident for five years immediately preceding application for the first issuance of a certificate, (d) human relations training, (e) successful teaching, administration, or provision of special services, and (f) moral, mental, and physical fitness for teaching, all in accordance with sound educational practices. Such rules, regulations, and procedures shall also provide for endorsement requirements to indicate areas of specialization on such certificates and permits.

(2) The board may issue a temporary certificate, valid for a period not to exceed two years, to any applicant for certification who has not completed the human relations training requirement.

(3) Members of any advisory committee established by the board to assist the board in teacher education and certification matters shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. Each school district which has an employee who serves as a member of such committee and which is required to hire a person to replace such member during the member's attendance at meetings or activities of the committee or any subcommittee thereof shall be reimbursed from the Certification Fund for the expense it incurs from hiring a replacement. School districts may excuse

employees who serve on such advisory committees from certain duties which conflict with any advisory committee duties.

**Source:** Laws 1963, c. 491, § 3, p. 1569; Laws 1981, LB 427, § 1; Laws 1984, LB 994, § 9; Laws 1985, LB 633, § 7; Laws 1986, LB 997, § 14; Laws 1987, LB 529, § 6; Laws 1989, LB 250, § 2; Laws 1990, LB 1090, § 20; Laws 1991, LB 511, § 57; Laws 1992, LB 245, § 62; Laws 1995, LB 123, § 2; R.S.Supp., 1995, § 79-1247.05; Laws 1996, LB 900, § 438; Laws 2001, LB 314, § 1; Laws 2003, LB 685, § 8; Laws 2009, LB547, § 2.

This statute grants broad powers to the State Board of Education to adopt rules and regulations governing the issuance of teaching certificates to be based upon "earned college credit" as

well as other factors deemed to be important to a determination of fitness to teach. State ex rel. Douglas v. Faith Baptist Church of Louisville, 207 Neb. 802, 301 N.W.2d 571 (1981).

### **79-809 Teachers' entry-level certificates or permits; qualifications.**

In addition to the requirements in section 79-808, the maximum which the board may require for the issuance of any entry-level certificate or permit shall be that the applicant (1) has a baccalaureate degree that qualifies for a certificate to teach, (2) has satisfactorily completed, within two years of the date of application, an approved program at a standard institution of higher education, (3) has satisfactorily demonstrated basic skills competency, (4) has special education training, (5) has earned college credit in an approved program, at a standard institution of higher education, for which endorsement is sought, and (6) has paid a nonrefundable fee to the department as provided in section 79-810.

**Source:** Laws 1963, c. 491, § 4, p. 1570; Laws 1976, LB 833, § 1; Laws 1984, LB 994, § 10; Laws 1985, LB 633, § 8; Laws 1990, LB 1090, § 21; Laws 1994, LB 1310, § 10; Laws 1996, LB 754, § 8; R.S.1943, (1994), § 79-1247.06; Laws 1996, LB 900, § 439; Laws 2001, LB 314, § 2; Laws 2003, LB 685, § 9; Laws 2007, LB150, § 1.

A state agency which requires, as a minimum for certification of an individual, the maximum requirement permitted by statute does not violate the limiting terms of such statute. The state has a compelling interest in the quality and ability of those who are employed to teach its young people, and a requirement that

such teacher possess an appropriate baccalaureate degree is neither arbitrary nor unreasonable and is a reliable indicator of the probability of success as a teacher. State ex rel. Douglas v. Faith Baptist Church of Louisville, 207 Neb. 802, 301 N.W.2d 571 (1981).

### **79-810 Certificates or permits; issuance by Commissioner of Education; fee; disposition; contents of certificate or permit; endorsements; Certification Fund; Professional Practices Commission Fund; created; use; investment.**

(1) Certificates and permits shall be issued by the commissioner upon application on forms prescribed and provided by him or her which shall include the applicant's social security number.

(2) Each certificate or permit issued by the commissioner shall indicate the area of authorization to teach, provide special services, or administer and any areas of endorsement for which the holder qualifies. During the term of any certificate or permit issued by the commissioner, additional endorsements may be made on the certificate or permit if the holder submits an application, meets the requirements for issuance of the additional endorsements, and pays a nonrefundable fee of forty dollars.

(3) The Certification Fund is created. Any fee received by the department under sections 79-806 to 79-815 shall be remitted to the State Treasurer for

credit to the fund. The fund shall be used by the department in paying the costs of certifying educators pursuant to such sections and to carry out subsection (3) of section 79-808. For issuance of a certificate or permit valid in all schools, the nonrefundable fee shall be fifty-five dollars, except that thirteen dollars of the fifty-five-dollar fee shall be credited to the Professional Practices Commission Fund which is created for use by the department to pay for the provisions of sections 79-859 to 79-871, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. For issuance of a certificate or permit valid only in nonpublic schools, the nonrefundable fee shall be forty dollars. Any money in the Certification Fund or the Professional Practices Commission 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 1963, c. 491, § 5, p. 1571; Laws 1967, c. 549, § 8, p. 1814; Laws 1969, c. 728, § 1, p. 2763; Laws 1969, c. 729, § 1, p. 2764; Laws 1969, c. 584, § 79, p. 2393; Laws 1977, LB 540, § 1; Laws 1980, LB 771, § 1; Laws 1991, LB 855, § 1; Laws 1991, LB 511, § 58; Laws 1992, LB 245, § 63; Laws 1993, LB 348, § 29; Laws 1994, LB 1066, § 89; R.S.1943, (1994), § 79-1247.07; Laws 1996, LB 900, § 440; Laws 1997, LB 206, § 1; Laws 1997, LB 752, § 216; Laws 2002, Second Spec. Sess., LB 1, § 5; Laws 2003, LB 685, § 10; Laws 2007, LB150, § 2; Laws 2009, First Spec. Sess., LB3, § 59.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **79-811 Teachers' and administrators' certificates or permits; college credits submitted; certification.**

All college credits submitted for the purpose of obtaining a certificate or permit shall be earned in or accepted by a standard institution of higher education and shall be certified by the proper authorities of the institution attended, showing the academic and professional preparation of the applicant.

**Source:** Laws 1963, c. 491, § 6, p. 1571; R.S.1943, (1994), § 79-1247.08; Laws 1996, LB 900, § 441; Laws 2003, LB 685, § 11.

#### Cross References

Approval of teacher education programs, State Board of Education, see section 79-318.

### **79-812 Repealed. Laws 2003, LB 685, § 37.**

### **79-813 Teachers' and administrators' certificates or permits; reciprocity; requirements.**

The board may authorize the issuance of certificates or permits to applicants who hold a valid certificate or permit currently in force in a state other than Nebraska if the requirements for the certificate or permit held by the applicant are comparable and equivalent to those required for a similar type of certificate or permit issued under sections 79-806 to 79-815.

**Source:** Laws 1963, c. 491, § 8, p. 1571; Laws 1988, LB 802, § 26; R.S.1943, (1994), § 79-1247.10; Laws 1996, LB 900, § 443; Laws 2003, LB 685, § 12.

**79-814 Teachers' and administrators' certificates or permits; limitations on use.**

The board may limit the use of any certificate or permit issued under sections 79-806 to 79-815.

**Source:** Laws 1963, c. 491, § 9, p. 1572; Laws 1985, LB 633, § 9; R.S.1943, (1994), § 79-1247.11; Laws 1996, LB 900, § 444; Laws 1997, LB 347, § 24; Laws 2003, LB 685, § 13.

**79-814.01 Criminal history record information search; denial of certificate or permit; when; costs; confidentiality.**

(1) Upon request by the commissioner, the Nebraska State Patrol shall undertake a search for criminal history record information relating to an applicant for a certificate pursuant to subdivision (1)(c) of section 79-808, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report to the commissioner that shall include the criminal history record information concerning the applicant.

(2) The commissioner may deny issuance of a certificate or permit to any applicant who has a felony conviction or who has any misdemeanor conviction involving abuse, neglect, or sexual misconduct. In reviewing an applicant's criminal history record information, the commissioner shall take into consideration any information, including information submitted by the applicant, regarding (a) the facts and circumstances surrounding a conviction, (b) the type of offense and the sentence imposed, (c) whether the conduct resulting in a conviction would constitute a crime in Nebraska, (d) the date of the offense, (e) the age of the applicant at the time of the offense, and (f) the applicant's conduct and positive social contributions since the offense.

(3) The board shall determine and set the costs for processing criminal history record information checks pursuant to this section and section 79-808 which shall be borne by the applicant for a certificate or permit. The costs shall be limited to the actual direct costs arising from the processing of the criminal history record information checks.

(4) Criminal history record information subject to federal confidentiality requirements shall remain confidential and may be released only upon the written authorization by the applicant, except that if the applicant appeals the denial of a certificate or permit by the commissioner, the filing of an administrative appeal shall constitute a release of the information for the limited purpose of the appeal. If the applicant requests a closed hearing, such request shall be subject to the Open Meetings Act.

**Source:** Laws 2003, LB 685, § 14; Laws 2004, LB 821, § 28.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**79-814.02 Conditional permit; when.**

An applicant subject to a criminal history record information check shall be issued a conditional permit prior to receipt by the commissioner of criminal

history record information of the applicant, which conditional permit shall be valid for up to one year, if the applicant signs a statement that identifies all crimes of which the applicant has been convicted and the commissioner determines the applicant to be of good moral character and meets all other certification requirements. An applicant's conditional permit is void upon a final determination that the applicant does not meet the requirements for issuance of a certificate. The applicant may request a hearing regarding the denial of a certificate or permit as provided by the rules and regulations adopted pursuant to section 79-808.

For purposes of this section, a determination is final upon issuance of a final decision on appeal or upon expiration of the time in which the applicant may request a hearing without such hearing being requested.

**Source:** Laws 2003, LB 685, § 15.

### **79-815 Certificate; continuance in force; conversion privileges.**

Any regular Nebraska certificate, including any permanent or life certificate in force on January 1, 1964, shall remain in force for its regular term. Upon application by the holder of any such certificate, the board may authorize the conversion of such certificate to a similar certificate or permit issued by the commissioner under sections 79-806 to 79-815.

**Source:** Laws 1963, c. 491, § 11, p. 1572; Laws 1971, LB 292, § 21; Laws 1988, LB 802, § 28; R.S.1943, (1994), § 79-1247.13; Laws 1996, LB 900, § 445; Laws 2003, LB 685, § 16.

### **79-816 Repealed. Laws 2003, LB 685, § 37.**

## (b) EMPLOYMENT CONTRACTS

### **79-817 Schools; contract of employment; writing required.**

A contract for the employment of a teacher or administrator for a public school in the State of Nebraska shall be in writing.

**Source:** Laws 1943, c. 201, § 1, p. 672; R.S.1943, § 79-2146; Laws 1949, c. 256, § 348, p. 807; Laws 1971, LB 802, § 6; R.S.1943, (1994), § 79-1248; Laws 1996, LB 900, § 447; Laws 2001, LB 797, § 17.

Teacher's contract must be in writing on form recommended by Commissioner of Education. *Johnson v. School Dist. No. 3 of Clay County*, 168 Neb. 547, 96 N.W.2d 623 (1959).

Use of contract form recommended by Superintendent of Public Instruction prevented discharge by district board. *Greer v. Chelewski*, 162 Neb. 450, 76 N.W.2d 438 (1956).

### **79-818 School board; employment of teachers and administrators; contracts; how executed; prohibitions.**

A majority of the members of a school board of any school district may enter into a contract of employment with a legally qualified teacher or administrator. Such majority has authority to designate one or more members of the board to sign such contract, which signature shall be binding upon the entire board. A duplicate of such contract shall be filed with the secretary. No member of the board shall enter into or execute on behalf of the district any contract with any teacher or administrator related to him or her or to the majority of the board by blood or marriage notwithstanding section 49-1499.04. The secretary shall notify the State Department of Education, at the time the contract is made, of the length of the proposed term of school and the name of the teacher or

administrator. No money belonging to the district shall be paid for teaching to any but legally qualified teachers, and a board shall not pay out money belonging to the school district to any teacher or administrator after such board has received a sworn statement upon behalf of a board that the services of the teacher or administrator in question are under previous contract to that board.

**Source:** Laws 1881, c. 78, subdivision IV, § 11, p. 348; Laws 1883, c. 72, § 7, p. 291; Laws 1901, c. 60, § 1, p. 432; R.S.1913, § 6773; Laws 1915, c. 117, § 1, p. 267; C.S.1922, § 6314; C.S.1929, § 79-411; Laws 1937, c. 182, § 1, p. 713; C.S.Supp.,1941, § 79-411; R.S. 1943, § 79-411; Laws 1949, c. 256, § 349, p. 807; Laws 1971, LB 802, § 7; R.S.1943, (1994), § 79-1249; Laws 1996, LB 900, § 448; Laws 1999, LB 272, § 88; Laws 2001, LB 242, § 25.

Power of district to employ a teacher and to transact business of the school district implies power to discharge for cause before expiration of term. *Arehart v. School District No. 8 of Hitchcock County*, 137 Neb. 369, 289 N.W. 540 (1940).

Duty of employing teacher is vested in school board. *Morfeld v. Huddin*, 131 Neb. 180, 267 N.W. 350 (1936).

Title to office cannot be determined in injunction suit. *School Dist. No. 77 of Phelps County v. Cowgill*, 76 Neb. 317, 107 N.W. 584 (1906).

Without stipulation to contrary, teacher cannot be dismissed without cause. *Wallace v. School Dist. No. 27 of Saline County*, 50 Neb. 171, 69 N.W. 772 (1897).

Contract is one of employment. Discretion of board cannot be controlled by writ of mandamus procured by voters of district. *State ex rel. Lewellen v. Smith*, 49 Neb. 755, 69 N.W. 114 (1896).

Contract with teacher is binding though moderator was not consulted. *Montgomery v. State ex rel. Thompson*, 35 Neb. 655, 53 N.W. 568 (1892).

Contract made by de facto officer binds district. *School Dist. No. 25 of Hall County v. Cowee*, 9 Neb. 53, 2 N.W. 235 (1879).

### **79-819 Schools; contract of employment; contents.**

A contract for employment of a teacher or administrator authorized under section 79-818 shall contain (1) a provision by which the employed person affirms that he or she holds or will hold, at the beginning of the term of the contract, a valid certificate properly registered with the school district and that he or she is not under contract with another school board of a school district in this state and (2) a provision that there shall be no penalty for release from the contract.

**Source:** Laws 1943, c. 201, § 2, p. 672; R.S.1943, § 79-2147; Laws 1949, c. 256, § 350, p. 808; Laws 1971, LB 802, § 8; R.S.1943, (1994), § 79-1250; Laws 1996, LB 900, § 449; Laws 1999, LB 272, § 89.

#### **Cross References**

**Certificate**, registration, see section 79-804.

Teacher must hold at beginning of term valid certificate registered in office of county superintendent. *Johnson v. School Dist. No. 3 of Clay County*, 168 Neb. 547, 96 N.W.2d 623 (1959).

### **79-820 Schools; contract with employees of another district, prohibited; penalty.**

No school board or board of education in the State of Nebraska shall enter into a contract of employment with a teacher or administrator who is already under contract with another school board or board of education within this state covering a part or all of the same time of performance as the contract with such other board. No person under contract with any school board or board of education shall enter into such a contract of employment with another school board or board of education for part or all of the same time of performance as his or her contract with such other board. Upon the receipt of a sworn statement, made for or authorized by such other board, that a person employed by any board in such capacity is already under contract of employ-

ment with such other board for part or all of the same time of performance as such person is, has been, or will be so employed by the board, the board shall immediately cease payment of any salary to such teacher or administrator. Any member of a board of education or school board who knowingly violates any of the provisions of this section shall be individually and personally liable for any damages sustained by the other school district.

**Source:** Laws 1943, c. 201, § 3, p. 672; R.S.1943, § 79-2148; Laws 1949, c. 256, § 351, p. 808; Laws 1971, LB 802, § 9; R.S.1943, (1994), § 79-1251; Laws 1996, LB 900, § 450.

**79-821 Schools; violation of contract; notice; suspension of certificate.**

Upon presentation of proof that any teacher, principal, supervisor, assistant superintendent, or superintendent has, without just cause, violated or abrogated his or her contract with a school district in the state, the State Board of Education shall suspend the certificate of such teacher, principal, supervisor, assistant superintendent, or superintendent for a period of not more than one calendar year after a hearing has been held at a time and place fixed by the board and of which notice has been given to the person whose certificate is sought to be suspended by either registered or certified mail at least ten days prior to the hearing.

**Source:** Laws 1943, c. 201, § 4, p. 673; R.S.1943, § 79-2149; Laws 1949, c. 256, § 352, p. 809; Laws 1957, c. 242, § 58, p. 865; Laws 1992, LB 1001, § 28; R.S.1943, (1994), § 79-1252; Laws 1996, LB 900, § 451.

Proceeding to suspend teacher's certificate becomes moot on appeal when period of suspension has elapsed. *Henderson v. School Dist. of Scottsbluff*, 184 Neb. 858, 173 N.W.2d 32 (1969).

Authority to revoke certificate is vested in State Board of Education. *Greer v. Chelewski*, 162 Neb. 450, 76 N.W.2d 438 (1956).

**79-822 Administrators; employment; salary; contract; term.**

At any regular meeting, a school board or board of education may elect for employment such administrators as the board may deem necessary for the proper conduct of the affairs of the school district at such salaries as the board may deem reasonable. It may contract with such administrators for terms not to exceed three years. No person shall be declared elected unless he or she receives the vote of a majority of all the members of the board. The contract of employment shall be reduced to writing.

**Source:** Laws 1971, LB 802, § 11; R.S.1943, (1994), § 79-1254.01; Laws 1996, LB 900, § 452.

**79-823 Repealed. Laws 1997, LB 347, § 59.**

(c) TENURE

**79-824 Terms, defined.**

For purposes of sections 79-824 to 79-842, unless the context otherwise requires:

(1) Certificated employee means and includes all teachers and administrators as defined in section 79-101, other than substitute teachers, who are employed one-half time or more by any class of school district;

(2) School board means the governing board or body of any class of school district;

(3) Probationary certificated employee means a teacher or administrator who has served under a contract with the school district for less than three successive school years in any school district, unless extended one or two years by a majority vote of the board in a Class IV or V school district, except that after September 1, 1983, in Class IV and V school districts the requirement shall be three successive school years. Probationary certificated employee also means superintendents, regardless of length of service;

(4) Just cause means: (a) Incompetency, which includes, but is not limited to, demonstrated deficiencies or shortcomings in knowledge of subject matter or teaching or administrative skills; (b) neglect of duty; (c) unprofessional conduct; (d) insubordination; (e) immorality; (f) physical or mental incapacity; (g) failure to give evidence of professional growth as required in section 79-830; or (h) other conduct which interferes substantially with the continued performance of duties;

(5) Permanent certificated employee means a teacher or administrator who has served the probation period as defined in this section; and

(6) School year, for purposes of employment, means three-fourths of the school year or more on duty, exclusive of summer school.

A certificated employee who has been hired to fulfill the duties of another certificated employee who is on leave of absence shall not accrue rights under sections 79-824 to 79-842 during the period that the employee is fulfilling such duties.

**Source:** Laws 1982, LB 259, § 1; Laws 1984, LB 994, § 13; Laws 1991, LB 166, § 1; R.S.1943, (1994), § 79-12,107; Laws 1996, LB 900, § 454.

Unprofessional conduct must be conduct directly related to the fitness of the actor to act in his or her professional capacity. Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession or conduct which is unbecoming a member in good standing of a profession. The use of corporal punishment by a teacher, in violation of section 79-295, may subject the teacher to discipline under this section. *Daily v. Board of Ed. of Morrill Cty. School Dist. No. 62-0063*, 256 Neb. 73, 588 N.W.2d 813 (1999).

While subsection (4) of this section (formerly subsection (4) of section 79-12,107) does not define neglect of duty, evidence that

a particular duty was not competently performed on certain occasions, or evidence of an occasional neglect of some duty of performance does not ordinarily establish incompetency or neglect of duty sufficient to constitute just cause for termination. Pursuant to subsection (4) of this section (formerly subsection (4) of section 79-12,107), unprofessional conduct must be conduct directly related to the employee's fitness to act in his or her professional capacity. *Boss v. Fillmore Cty. Sch. Dist. No. 19*, 251 Neb. 669, 559 N.W.2d 448 (1997).

**79-825 Part-time certificated employee; become permanent employee; formula; reduction in force; effect.**

(1) Part-time certificated employees shall become permanent certificated employees based upon the following formula:

(a) For certificated employees employed four-fifths time or more, each such year of employment shall count as a full successive school year; and

(b) For certificated employees employed one-half time or more but less than four-fifths time, each such year of employment shall be credited against the three-year requirement for acquiring permanent certificated employee status in an amount proportionate to the term of such employment for each year. Such certificated employees shall become eligible for permanent certificated status at the beginning of the school year next succeeding the year in which they attain the proportionate amount of time.

(2) Any certificated employee who achieves permanent certificated employee status shall not lose such permanent certificated employee status because of

reduction in force resulting in a contract amendment which would reduce such certificated employee to any part-time employment position.

**Source:** Laws 1982, LB 259, § 2; Laws 1991, LB 166, § 2; R.S.1943, (1994), § 79-12,108; Laws 1996, LB 900, § 455.

#### Cross References

**Reduction-in-force policy**, see sections 79-846 to 79-849.

Subsection (1)(b) of this section (formerly subsection (1)(b) of section 79-12,108) allows a teacher's pre-1991 service to be counted toward his or her permanent status. *Nickel v. Saline Cty. Sch. Dist. No. 163*, 251 Neb. 762, 559 N.W.2d 480 (1997).

### **79-826 Certificated employee; disciplinary action; superintendent; powers; procedures.**

The superintendent or the superintendent's designee may take action with regard to a certificated employee's performance or conduct which is deemed reasonably necessary to assist the certificated employee and further school purposes, including: (1) Counseling; (2) oral reprimand; (3) written reprimand; and (4) suspension without pay for not to exceed thirty working days.

Prior to taking any action under subdivision (3) of this section, the certificated employee shall be advised of the alleged reasons for the proposed action and provided the opportunity to present the certificated employee's version of the facts. The certificated employee may proceed under the school district's grievance procedure if the school district has such a grievance procedure which provides for a review of such action or may, within seven calendar days after the superintendent or superintendent's designee takes such action, challenge the decision through the administrative chain of command.

Prior to taking any action under subdivision (4) of this section, the certificated employee shall be advised in writing of the alleged reasons for the proposed action and provided the opportunity to present the certificated employee's version of the facts. Within seven calendar days after receipt of such notice, the certificated employee may make a written request to the secretary of the school board or the superintendent or superintendent's designee for formal due process hearing under section 79-832. If such a request is not delivered within such time, the action of the superintendent or the superintendent's designee shall become final.

**Source:** Laws 1982, LB 259, § 3; R.S.1943, (1994), § 79-12,109; Laws 1996, LB 900, § 456.

For purposes of bringing error proceedings, this statute does not require a school board to act in a judicial manner when administering pay scale grievances. *Kropp v. Grand Island Pub. Sch. Dist. No. 2*, 246 Neb. 138, 517 N.W.2d 113 (1994).

### **79-827 Certificated employee; contract cancellation or amendment; reasons; procedures.**

(1) The contract of any certificated employee, including a superintendent, associate superintendent, or assistant superintendent, may be canceled or amended by a majority of the members of the school board during the school year for any of the following reasons: (a) Upon revocation or suspension of a certificate by the State Board of Education of any certificated employee whose duties require such a certificate; (b) breach of any of the material provisions of the teacher's or administrator's contract; (c) for any of the reasons set forth in the employment contract; (d) incompetency; (e) neglect of duty; (f) unprofessional conduct; (g) insubordination; (h) immorality; or (i) physical or mental incapacity.

(2) If the school board or the superintendent or superintendent's designee of any school district determines that it is appropriate to consider cancellation of a certificated employee's contract during the school year for the reasons set forth in subsection (1) of this section, the certificated employee shall be notified in writing of the alleged grounds for cancellation of the contract and that such certificated employee's contract may be canceled. Within seven calendar days after receipt of such notice, the certificated employee may make a written request to the secretary of the school board or to the superintendent or superintendent's designee for a hearing.

(3) Prior to scheduling of action or the hearing, if requested, the notice of possible cancellation and the reasons supporting possible cancellation shall be considered a confidential employment matter subject to the provisions of sections 79-539, 79-8,109, and 84-1410 and shall not be released to the public or any news media.

(4) This section does not prevent the suspension from duty with pay of a certificated employee pending a decision on the cancellation of the contract.

**Source:** Laws 1982, LB 259, § 4; R.S.1943, (1994), § 79-12,110; Laws 1996, LB 900, § 457; Laws 2003, LB 685, § 17.

Subsection (1) of this section (formerly subsection (1) of section 79-12,110) confers upon a school board the authority to cancel the contract of any certificated employee by a majority vote of its members. Pursuant to subsection (1) of this section, a probationary certificated employee's contract may be canceled for reasons including incompetency, neglect of duty, unprofessional conduct, or reasons set forth in the employee's contract. *Boss v. Fillmore Cty. Sch. Dist. No. 19*, 251 Neb. 669, 559 N.W.2d 448 (1997).

Approval in an open meeting of a motion to consider the termination of a teacher without stating any details is not a public release of information in violation of this section. *Stephens v. Board of Ed. of Sch. Dist. No. 5 of Pierce County*, 230 Neb. 38, 429 N.W.2d 722 (1988).

A contract of a certificated employee may be canceled at any time during the school year pursuant to the provisions of this section. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

A contractual provision purporting to alter the deadline for notice of nonrenewal does not affect a school board's ability to cancel a contract pursuant to this section. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

The notice of cancellation required by this section is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

### **79-828 Probationary certificated employee; probationary period; evaluation; contract amendment or nonrenewal; procedure.**

(1) The contract of a probationary certificated employee shall be deemed renewed and remain in full force and effect unless amended or not renewed in accordance with sections 79-824 to 79-842.

(2) The purpose of the probationary period is to allow the employer an opportunity to evaluate, assess, and assist the employee's professional skills and work performance prior to the employee obtaining permanent status.

All probationary certificated employees employed by any class of school district shall, during each year of probationary employment, be evaluated at least once each semester, unless the probationary certificated employee is a superintendent, in accordance with the procedures outlined below:

The probationary certificated employee shall be observed and evaluation shall be based upon actual classroom observations for an entire instructional period. If deficiencies are noted in the work performance of any probationary certificated employee, the evaluator shall provide the probationary certificated employee at the time of the observation with a list of deficiencies and a list of suggestions for improvement and assistance in overcoming the deficiencies. The evaluator shall also provide the probationary certificated employee with follow-up evaluations and assistance when deficiencies remain.

If the probationary certificated employee is a superintendent, he or she shall be evaluated twice during the first year of employment and at least once annually thereafter.

Any certificated employee employed prior to September 1, 1982, by the school board of any Class I, II, III, or VI school district shall serve the probationary period required by law prior to such date and shall not be subject to any extension of probation.

(3) If the school board or the superintendent or superintendent's designee determines that it is appropriate to consider whether the contract of a probationary certificated employee or the superintendent should be amended or not renewed for the next school year, such certificated employee shall be given written notice that the school board will consider the amendment or nonrenewal of such certificated employee's contract for the ensuing school year. Upon request of the certificated employee, notice shall be provided which shall contain the written reasons for such proposed amendment or nonrenewal and shall be sufficiently specific so as to provide such employee the opportunity to prepare a response and the reasons set forth in the notice shall be employment related.

(4) The school board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal is not for constitutionally impermissible reasons, and such nonrenewal shall be in accordance with sections 79-824 to 79-842. Amendment or nonrenewal for reason of reduction in force shall be subject to sections 79-824 to 79-842 and 79-846 to 79-849.

(5) Within seven calendar days after receipt of the notice, the probationary certificated employee may make a written request to the secretary of the school board or to the superintendent or superintendent's designee for a hearing before the school board.

(6) Prior to scheduling of action or a hearing on the matter, if requested, the notice of possible amendment or nonrenewal and the reasons supporting possible amendment or nonrenewal shall be considered a confidential employment matter as provided in sections 79-539, 79-8,109, and 84-1410 and shall not be released to the public or any news media.

(7) At any time prior to the holding of a hearing or prior to final determination by the school board to amend or not renew the contract involved, the probationary certificated employee may submit a letter of resignation for the ensuing year, which resignation shall be accepted by the school board.

(8) The probationary certificated employee shall be afforded a hearing which shall not be required to meet the requirements of a formal due process hearing as set forth in section 79-832 but shall be subject to section 79-834.

**Source:** Laws 1982, LB 259, § 5; Laws 1986, LB 534, § 1; R.S.1943, (1994), § 79-12,111; Laws 1996, LB 900, § 458; Laws 2012, LB870, § 5.

Only the superintendent or the superintendent's designee can determine and recommend to the school board that it should consider the nonrenewal of a teaching contract. Once the school board, superintendent, or superintendent's designee recommends that the school board should consider nonrenewal of a teaching contract, one of those three must give notice to the teacher that the school board will be considering nonrenewal of such teacher's contract. *Bentley v. School Dist. No. 025 of Custer County*, 255 Neb. 404, 586 N.W.2d 306 (1998).

Subsection (2) of this section (formerly subsection (2) of section 79-12,111) requires that superintendents be evaluated in accordance with the statutory provisions. Subsection (2) of this section (formerly subsection (2) of section 79-12,111) requires that the school board evaluate its superintendent at least twice during his or her first year of employment. Subsection (2) of this section (formerly subsection (2) of section 79-12,111) requires that a school board provide its superintendent with notice in the

form of a biannual evaluation his or her first year of employment as to any deficiencies in his or her work. *Boss v. Fillmore Cty. Sch. Dist. No. 19*, 251 Neb. 669, 559 N.W.2d 448 (1997).

The notice required under subsection (3) of this section refers to nonrenewal or amendment of the contract of a probationary certificated employee for the next school year. Under subsections (6) and (7) of this section, such employee is entitled to confidential treatment of the notice and reasons supporting possible amendment or nonrenewal of the contract of employment only if requested by the employee. Under subsection (8) of this section, a probationary employee is entitled to only an informal hearing, not a formal due process hearing. *Matrisciano*

*v. Board of Ed. of Brady Sch. Dist. No. 6 of Lincoln County*, 236 Neb. 133, 459 N.W.2d 230 (1990).

Subsection (4) of this section subjects the nonrenewal of a probationary teacher's contract because of a reduction in force to the notice provisions of subsections (3) and (5) of this section. *Kennedy v. Board of Ed. of Sch. Dist. of Ogallala*, 230 Neb. 68, 430 N.W.2d 49 (1988).

This provision is applicable to a principal employed as a probationary certificated employee. *Nuzum v. Board of Ed. of Sch. Dist. of Arnold*, 227 Neb. 387, 417 N.W.2d 779 (1988).

### **79-829 Permanent certificated employee; contract amendment or termination; reasons.**

The contract of a permanent certificated employee shall be deemed continuing and shall be renewed and remain in full force and effect unless amended or terminated in accordance with the provisions of sections 79-824 to 79-842. The school board by a vote of the majority of its members may determine that such permanent certificated employee's contract shall be amended or terminated for any of the following reasons: (1) Just cause as defined in section 79-824; (2) reduction in force as set forth in sections 79-846 to 79-849, or change of leave-of-absence policies; (3) failure of the certificated employee upon written request of the school board or the administrators of the school district to accept employment for the next school year within the time designated in the request, except that the certificated employee shall not be required to signify such acceptance prior to March 15 of each year; or (4) revocation or suspension by the State Board of Education of the certificate of a certificated employee whose duties require such a certificate.

**Source:** Laws 1982, LB 259, § 6; R.S.1943, (1994), § 79-12,112; Laws 1996, LB 900, § 459; Laws 2003, LB 685, § 18.

Although this section does not specifically define the phrase "reduction in force" as used in the teacher tenure statutes, it involves terminating a teacher's contract due to a surplus of staff. *Miller v. School Dist. No. 18-0011 of Clay Cty.*, 278 Neb. 1018, 775 N.W.2d 413 (2009).

The intent of the tenured teacher statutes is to guarantee a tenured, or permanent certificated, teacher continued employment except where specific statutory grounds for termination of the teacher's contract are demonstrated. *Miller v. School Dist.*

*No. 18-0011 of Clay Cty.*, 278 Neb. 1018, 775 N.W.2d 413 (2009).

Pursuant to former sections 79-12,107 to 79-12,121 and sections 79-1254.02 to 79-1254.08, the Legislature has attenuated a school board's discretion to pare its staff in the face of reduced needs and has imposed specific procedures for achieving a reduction in force. *Nickel v. Saline Cty. Sch. Dist. No. 163*, 251 Neb. 762, 559 N.W.2d 480 (1997).

### **79-830 Permanent certificated employee; evidence of professional growth required.**

Every six years permanent certificated employees shall give evidence of professional growth. Six semester hours of college credit shall be accepted as evidence of professional growth or, in the alternative, such other activities as are approved by the school board, which may include, but are not limited to, educational travel, professional publications, or work on educational committees.

**Source:** Laws 1982, LB 259, § 7; R.S.1943, (1994), § 79-12,113; Laws 1996, LB 900, § 460.

### **79-831 Certificated employee; contract amendment, termination, nonrenewal, or cancellation; notice; hearing.**

Any probationary or permanent certificated employee whose contract of employment may be amended, terminated, or not renewed for the next school year shall be notified in writing on or before April 15 of each year of such

possible action on the contract. If the certificated employee wishes a hearing, a written request shall be sent to the secretary of the school board or the superintendent of schools or the superintendent's designee within seven calendar days after receipt of the written notice. Unless (1) continued by written agreement between the parties or their representatives as provided in this section or (2) a hearing officer is utilized as provided in sections 79-840 to 79-842, final action by the school board must be taken on or before May 15 of each year. If a hearing on amendment, nonrenewal, cancellation, or termination is not requested within the time provided for in sections 79-824 to 79-842, the school board shall make a final determination. With regard to all hearings provided for under such sections, either formal due process hearings or informal hearings, the certificated employee shall be advised in writing at least five days prior to the date of hearing of the date, time, and place of the hearing. Except as provided in section 79-840, all such hearings shall be held within thirty days of the date of the request for hearing. The parties or their representatives by mutual agreement, confirmed in writing, may extend the times for hearings or final determinations by the board under sections 79-824 to 79-842.

**Source:** Laws 1982, LB 259, § 8; Laws 1993, LB 177, § 1; R.S.1943, (1994), § 79-12,114; Laws 1996, LB 900, § 461.

The requirements for termination of a probationary employee of a school district authorize a more informal proceeding, but require notice of hearing, opportunity to appear in person or by representative, opportunity to offer evidence, and an open session in the event of a termination. *Brennan v. School Dist. No. 21 of Holt County*, 235 Neb. 948, 458 N.W.2d 227 (1990).

If an employee who is given notice of possible cancellation of his or her contract does not request a hearing within 7 calendar days, a school board has no duty to provide a hearing. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

**79-832 Formal due process hearing; employee's rights; how conducted; school board decision.**

(1) A formal due process hearing for the purposes of sections 79-827 and 79-829 means a hearing procedure adopted by the school board which contains at least the following: (a) Notification to the certificated employee in writing at least five days prior to the hearing of the grounds alleged for action, cancellation, termination, or nonrenewal of the teacher's contract; (b) upon request of the certificated employee a notification, at least five days prior to the hearing, of the names of any witnesses who will be called to testify against the certificated employee and an opportunity to examine any documents that will be presented at the hearing; (c) the right to be represented; and (d) an opportunity to cross-examine all witnesses and to examine all documents and to present evidence material to the issues.

(2) Due and proper notice of the hearing shall be given in accordance with the Open Meetings Act. Upon an affirmative vote of a majority of the school board's members present and voting and upon specific request of the certificated employee or the certificated employee's representative, the hearing shall be conducted in a closed session, but the formal action of the school board shall be taken in open session.

(3) A majority of the members of the school board shall render the decision to amend, cancel, terminate, or not renew a certificated employee's contract, based solely upon the evidence produced at the hearing, shall reduce its findings and determinations to writing, and shall deliver a written copy thereof to the certificated employee.

**Source:** Laws 1982, LB 259, § 9; R.S.1943, (1994), § 79-12,115; Laws 1996, LB 900, § 462; Laws 2004, LB 821, § 29.

## Cross References

**Open Meetings Act**, see section 84-1407.

An employee is not entitled to a summary of the nature of the testimony of the witnesses against him or her. *Johanson v. Board of Ed. of Lincoln Cty. School Dist. No. 1*, 256 Neb. 239, 589 N.W.2d 815 (1999).

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing

will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in this section will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

### **79-833 Error proceedings; jurisdiction of court.**

In error proceedings to reverse, vacate, or modify a final order by a school board made pursuant to sections 79-824 to 79-842, the school district, school board, or both may be named as defendants in error in the proceedings. The proceedings shall not be defeated and the court shall not be deprived of subject matter jurisdiction because the petitioner named the school board rather than the school district or the school district rather than the school board as the defendant in error.

This section shall apply to all error proceedings pending in the district court or the Supreme Court on June 11, 1991, and to error proceedings commenced after such date.

**Source:** Laws 1991, LB 511, § 60; Laws 1992, LB 245, § 65; R.S.1943, (1994), § 79-12,115.01; Laws 1996, LB 900, § 463.

### **79-834 Informal hearing; when held; procedures.**

Hearings involving the question of the nonrenewal of a probationary certificated employee's contract or the nonrenewal of a superintendent shall not be due process hearings and shall not be required to meet the requirements of section 79-832 but shall be informal hearings at which the probationary certificated employee or superintendent, or his or her representative, shall be afforded the opportunity to discuss and explain his or her position with regard to continued employment, to present information, and to ask questions of those appearing on behalf of the school district. Such hearings shall be held in closed session at the request of the certificated employee or superintendent, or his or her representative, and upon affirmative vote of a majority of the school board members present and voting, but the formal action of the school board for nonrenewal shall be in open session.

**Source:** Laws 1982, LB 259, § 10; Laws 1993, LB 177, § 2; R.S.1943, (1994), § 79-12,116; Laws 1996, LB 900, § 464.

Neither this section nor any other statute dealing specifically with the subject of a school district's nonrenewal of a probationary employee's contract requires that a school board deliberate in open session following an open hearing. *McQuinn v. Douglas Cty. Sch. Dist. No. 66*, 259 Neb. 720, 612 N.W.2d 198 (2000).

The requirements for termination of a probationary employee of a school district authorize a more informal proceeding, but require notice of hearing, opportunity to appear in person or by representative, opportunity to offer evidence, and an open session in the event of a termination. *Brennan v. School Dist. No. 21 of Holt County*, 235 Neb. 948, 458 N.W.2d 227 (1990).

The termination of the contract of a probationary teacher requires only the affirmative vote of a majority of a quorum of the school board. *Jeter v. Board of Education*, 231 Neb. 80, 435 N.W.2d 170 (1989).

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to this section, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

### **79-835 Probationary certificated employee; superintendent; school board; special procedures applicable.**

The hearing for a probationary certificated employee, except a superintendent, provided in section 79-834, may be held before a committee of the school

board consisting of not less than three of the board's total members. Notice of such a hearing shall be sent to all board members five days prior to such hearing. If a hearing is held before such a committee, the majority opinion of the committee shall constitute a recommendation to the school board with the final determination being made by a majority vote of the members of the school board without additional hearing. The hearing for a superintendent provided in such section shall not be held before a committee of the school board. Notice shall be given to all parties at least five days prior to such a hearing. A vote of the majority of the members of the school board shall determine final action relative to the contract of the superintendent.

**Source:** Laws 1982, LB 259, § 11; Laws 1993, LB 177, § 3; R.S.1943, (1994), § 79-12,117; Laws 1996, LB 900, § 465.

### **79-836 School board; additional sanctions authorized; when.**

(1) After providing the opportunity for a hearing on cancellation, termination, or nonrenewal as provided for in sections 79-828, 79-829, and 79-832, and except when reduction in force is the reason given for possible termination, and when just cause can be shown, the school board may impose such other sanctions, other than termination, cancellation, or nonrenewal of the contract, as may be agreed upon by the parties.

(2) The fact that action has been taken under this section in the past may be taken into consideration in determining appropriate action in future hearings with regard to the certificated employee for a period of five years following the date of such action.

**Source:** Laws 1982, LB 259, § 12; R.S.1943, (1994), § 79-12,118; Laws 1996, LB 900, § 466.

#### **Cross References**

**Reduction-in-force policy**, see sections 79-846 to 79-849.

### **79-837 School board; subpoena power.**

The school board may on its own behalf, or shall upon the request of the certificated employee or his or her representative or at the request of the school district administration or the superintendent or the superintendent's designee, (1) subpoena and compel the attendance of witnesses residing either within or outside the state for the purpose of appearing and testifying at any hearing provided for in sections 79-824 to 79-842 and for the purpose of having such witnesses' depositions taken, in the manner prescribed by law for the taking of depositions in civil actions in the district court, and (2) issue subpoenas for the production of any papers, books, accounts, and documents.

**Source:** Laws 1982, LB 259, § 13; R.S.1943, (1994), § 79-12,119; Laws 1996, LB 900, § 467.

#### **Cross References**

**Deposition**, civil procedure, see section 25-1242.

### **79-838 School board; grant leave of absence; procedures; rights.**

Any school board, upon written request, may grant a leave of absence to a permanent certificated employee for such reasons as the school board deems appropriate, including, but not limited to, study, military service, or professional improvement or because of physical disability or sickness, or as otherwise

required by law, subject to such rules and regulations governing leaves of absence as may be adopted by the school board. A school board may require a permanent certificated employee, because of physical disability or sickness, to take a leave of absence for a period not exceeding one year. In any such case, the procedure to be followed and the rights of the permanent certificated employee shall be the same as those prescribed in sections 79-824 to 79-842 for termination of a permanent certificated employee.

**Source:** Laws 1982, LB 259, § 14; R.S.1943, (1994), § 79-12,120; Laws 1996, LB 900, § 468.

#### **79-839 Certificated employees; assignment rights.**

Sections 79-824 to 79-842 do not provide any certificated employee a right to a specific assignment so long as such certificated employee is assigned to duties for which he or she is qualified by reason of certification, endorsement, or college preparation.

**Source:** Laws 1982, LB 259, § 15; R.S.1943, (1994), § 79-12,121; Laws 1996, LB 900, § 469.

#### **79-840 Class IV or Class V school district; hearing officer; use authorized.**

Any school board of a Class IV or Class V school district or certificated employee thereof may require that hearings held pursuant to sections 79-824 to 79-839 and such other hearings as designated by the school board be conducted by a hearing officer as specified in sections 79-841 and 79-842. If a hearing is held before such a hearing officer, the requirements of section 79-831 that final action must be taken by the school board on or before May 15 of each year and that a hearing must be held within thirty days of the date of the request for a hearing shall not apply.

**Source:** Laws 1993, LB 177, § 4; R.S.1943, (1994), § 79-12,121.01; Laws 1996, LB 900, § 470.

#### **79-841 Class IV or V school district; hearing officer; selection.**

If the school board of a Class IV or V school district or certificated employee thereof determines that a hearing shall be conducted by a hearing officer, the parties to the hearing or their representatives shall select a hearing officer. Any person selected as a hearing officer pursuant to this section shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts. If the parties cannot agree on the selection of a hearing officer within seven days after the filing of the request for a hearing, the secretary of the school board shall immediately request a list of hearing officers from the State Department of Education. The department shall at all times maintain a list of at least five qualified hearing officers and shall provide a copy of the list within five days after receipt of a written request from the secretary of a school board. The parties or their representatives shall select the hearing officer by alternately removing a name from the list until only one name remains. The person whose name remains shall be the hearing officer. The parties shall determine by lot which party shall remove the first name from the list. Such selection shall be completed within seven days after the receipt of the list from the department.

The secretary of the school board shall inform the department of the name of the hearing officer selected.

**Source:** Laws 1993, LB 177, § 5; R.S.1943, (1994), § 79-12,121.02; Laws 1996, LB 900, § 471.

**79-842 Class IV or V school district; hearing officer; procedure; costs.**

The hearing officer selected pursuant to section 79-841 shall conduct the hearing referred to in section 79-840, hear and receive evidence, and make recommended findings of fact and conclusions of law. The hearing shall be held in private if the employee so requests, and if the employee does not so request the hearing shall be conducted in public. Within thirty days following the hearing, the hearing officer shall transmit to the school board the original or a certified copy of the record of the hearing which shall include the transcribed testimony from the hearing and the recommended findings of fact and conclusions of law. The certified record filed by the hearing officer shall be the record upon which the school board shall make its decision, and no additional evidence shall be heard by the school board. The school board shall give each party an opportunity for oral argument and briefing prior to making its decision. If a hearing is requested, no one shall contact or be contacted by the school board or individual school board members regarding the subject matter of the hearing in order to obtain or provide information to be considered in making the decision or in an attempt to persuade the school board regarding the decision to be made, except that the school board may receive advice and counsel from an attorney hired to represent the school board in making the decision. In making its decision, the school board shall give weight to the findings of fact of the hearing officer but shall not be bound by them. The school board shall make its decision within twenty days after receipt of the record from the hearing officer. All expenses and fees of the hearing officer in connection with the hearing shall be paid by the school board.

**Source:** Laws 1993, LB 177, § 6; R.S.1943, (1994), § 79-12,121.03; Laws 1996, LB 900, § 472.

**79-843 Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision.**

The contracts of the teaching staff and school nurses employed by an educational program administered by the State Department of Education, the Department of Health and Human Services, or a political subdivision of the state, except a school district or an educational service unit, the colleges governed by the Board of Trustees of the Nebraska State Colleges, and any university governed by the Board of Regents of the University of Nebraska shall require the sanction of a majority of the members of the governing board. Except as provided in section 79-845, each such contract shall be deemed renewed and in force and effect until a majority of the governing board votes or the Department of Health and Human Services determines, sixty days before the close of the contract period, to amend or terminate the contract for just cause. The department or the secretary of the governing 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 department or 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 after receipt of such notice, a written request with the department or board for a hearing before the department or board. Upon receipt of such request, the department or board shall order the hearing to be held within ten days after such receipt 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 department or board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing.

**Source:** Laws 1973, LB 422, § 1; Laws 1975, LB 82, § 2; Laws 1975, LB 493, § 2; Laws 1977, LB 368, § 1; Laws 1978, LB 908, § 1; Laws 1980, LB 442, § 1; Laws 1982, LB 259, § 16; Laws 1991, LB 663, § 42; Laws 1991, LB 511, § 59; Laws 1992, LB 245, § 64; Laws 1993, LB 239, § 3; R.S.1943, (1994), § 79-1254.02; Laws 1996, LB 900, § 473; Laws 1996, LB 1044, § 818; Laws 2007, LB296, § 712.

Pursuant to former sections 79-1254.02 to 79-1254.08 and sections 79-12,107 to 79-12,121, the Legislature has attenuated a school board's discretion to pare its staff in the face of reduced needs and has imposed specific procedures for achieving a reduction in force. *Nickel v. Saline Cty. Sch. Dist. No. 163*, 251 Neb. 762, 559 N.W.2d 480 (1997).

An evidential hearing requested regarding potential termination of a teacher's contract should occur before a tribunal that, among its attributes, is impartial. *Heithoff v. Nebraska State Bd. of Ed.*, 230 Neb. 209, 430 N.W.2d 681 (1988).

As a result of this section, the school board, and not the education commissioner, has authority to terminate a teacher's

employment contract; hence, the board is the only party defendant indispensable for judicial review of an order terminating a teacher. *Heithoff v. Nebraska State Bd. of Ed.*, 230 Neb. 209, 430 N.W.2d 681 (1988).

This section is not applicable to a Class V school district. *Kibbon v. School Dist. of Omaha*, 196 Neb. 293, 242 N.W.2d 634 (1976).

This section requires the affirmative vote of a majority of all members of the Board of Trustees of the Nebraska State Colleges to amend or terminate the contract of a teacher. *Chase v. Board of Trustees of Nebraska State Colleges*, 194 Neb. 688, 235 N.W.2d 223 (1975).

### **79-844 Teachers and school nurses; contract; minimum standard.**

Sections 79-843 and 79-844 provide a minimum standard and do not repeal any law of a governing authority that provides for additional contract rights pertaining to the same subject matter.

**Source:** Laws 1973, LB 422, § 2; R.S.1943, (1994), § 79-1254.03; Laws 1996, LB 900, § 474.

Former section 79-1254.02 is not applicable to a Class V school district. *Kibbon v. School Dist. of Omaha*, 196 Neb. 293, 242 N.W.2d 634 (1976).

### **79-845 Department of Correctional Services; Department of Health and Human Services; contract with teaching staff; probationary period.**

Any contract of employment entered into after July 1, 1984, between the teaching staff and the Department of Correctional Services or the Department of Health and Human Services 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 1980, LB 442, § 2; Laws 1984, LB 9, § 1; Laws 1993, LB 239, § 4; R.S.1943, (1994), § 79-1254.09; Laws 1996, LB 900, § 475; Laws 1996, LB 1044, § 819.

## (d) REDUCTION IN FORCE

**79-846 Reduction-in-force policy; adopt; requirements.**

Prior to January 1, 1979, every school board, board of education, or governing board of any educational institution in Nebraska covered by the provisions of sections 79-824 to 79-842 shall adopt a reduction-in-force policy covering employees subject to such statutory provisions to carry out the intent of sections 79-846 to 79-849. 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, in cases in which 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 1978, LB 375, § 1; R.S.1943, (1994), § 79-1254.05; Laws 1996, LB 900, § 476.

A school district is legally prohibited by Nebraska's teacher tenure statutes from terminating a permanent certificated teacher's contract and then hiring a probationary teacher to replace him or her. *Miller v. School Dist. No. 18-0011 of Clay Cty.*, 278 Neb. 1018, 775 N.W.2d 413 (2009).

If the contracts of a tenured teacher and a probationary teacher are subject to termination due to a surplus of staff, the tenured teacher must be retained so long as he or she has the

required certification in the area. *Nickel v. Saline Cty. Sch. Dist. No. 163*, 251 Neb. 762, 559 N.W.2d 480 (1997).

Reduction in force policy adopted by board pursuant to this section could properly include teachers' contributions to activity program as a criterion for consideration in selection of teacher to be eliminated through reduction in force. *Dykeman v. Board of Education*, 210 Neb. 596, 316 N.W.2d 69 (1982).

**79-847 Reduction in force; board of education and school district administration; duties.**

Before a reduction in force occurs, the school board or board of education and the school district administration shall present competent evidence demonstrating that a change in circumstances has occurred necessitating a reduction in force. Any alleged change in circumstances must 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 sections 79-824 to 79-842, 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 1978, LB 375, § 2; Laws 1985, LB 633, § 10; R.S.1943, (1994), § 79-1254.06; Laws 1996, LB 900, § 477.

Before a school board may terminate a teacher's employment because of a reduction in force, it must establish via proof at the hearing (1) a change in circumstances necessitating a reduction in force, (2) that the change in circumstances specifically relates to the teacher to be affected, and (3) that there are no vacancies in the staff for which the teacher to be affected is qualified. A school board has authority to effectuate a reduction in force in

accordance with Nebraska statutes. *Nickel v. Saline Cty. Sch. Dist. No. 163*, 251 Neb. 762, 559 N.W.2d 480 (1997).

In order to support the amendment of a permanent certified teacher's contract on the basis of a reduction in force, the evidence produced at the hearing must establish the contents of the school's reduction in force policy. *Trolson v. Board of Ed. of Sch. Dist. of Blair*, 229 Neb. 37, 424 N.W.2d 881 (1988).

**79-848 Reduction in force; employee; contract terminated; effect; recall; rights.**

Any employee whose contract is terminated because of reduction in force shall be considered 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 school to any position for which he or she is qualified by endorsement or college preparation to teach. Whenever a school district has, pursuant to section 79-598, contracted for the instruction of all of the students residing in such district or has, pursuant to section 79-499, contracted for the instruction of its students in grades nine through twelve, the preferred rights to reemployment shall commence at the end of the student contract period as agreed to by the contracting school district. 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 district. 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 1978, LB 375, § 3; Laws 1988, LB 520, § 4; R.S.1943, (1994), § 79-1254.07; Laws 1996, LB 900, § 478.

The purpose of the tenured teacher act, former sections 79-1248 to 79-1254.08, is to guarantee a tenured teacher continued employment except in two circumstances: (1) discharge for cause, and (2) reduction in teaching force. *Roth v. School Dist. of Scottsbluff*, 213 Neb. 545, 330 N.W.2d 488 (1983).

The term "reduction in force" is not so vague as to be unconstitutional and is held to mean the termination of a teacher "due to a surplus of staff". *Roth v. School Dist. of Scottsbluff*, 213 Neb. 545, 330 N.W.2d 488 (1983).

### **79-849 Reduction in force; noncompliance with federal or state law; how treated.**

Notwithstanding sections 79-846 to 79-848, if the reduction of an employee based upon the provisions of such sections would place a district in noncompliance of any federal or state laws or regulations requiring affirmative action employment practices, the district may vary from these provisions as necessary to comply with such laws or regulations.

**Source:** Laws 1978, LB 375, § 4; R.S.1943, (1994), § 79-1254.08; Laws 1996, LB 900, § 479.

### **(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS**

#### **79-850 Terms, defined.**

For purposes of sections 79-850 to 79-858:

(1) Reorganized school district means: (a) Any expanded or altered school district, organized or altered by any of the means provided by Nebraska law including, but not limited to, the methods provided by the Reorganization of School Districts Act, the Learning Community Reorganization Act, section 79-407, 79-413, or 79-473, or sections 79-415 to 79-417 or 79-452 to 79-455; or (b) any school district to be formed in the future if the petition or plan for such reorganized school district has been approved pursuant to any of the methods set forth in subdivision (1)(a) of this section when the effective date of such reorganization is prospective. For purposes of this subdivision, a petition or plan shall be deemed approved when the last legal action has been taken, as prescribed in section 79-413, 79-450, or 79-455, necessary to effect the changes in boundaries as set forth in the petition or plan; and

(2) Unified system means a unified system as defined in section 79-4,108 recognized by the State Department of Education pursuant to subsection (3) of such section, which employs certificated staff.

**Source:** Laws 1980, LB 844, § 1; Laws 1985, LB 662, § 36; Laws 1988, LB 520, § 5; R.S.1943, (1994), § 79-12,104; Laws 1996, LB 900,

§ 480; Laws 1997, LB 347, § 25; Laws 1998, LB 1219, § 1; Laws 1999, LB 272, § 90; Laws 2005, LB 126, § 43; Laws 2006, LB 1024, § 59; Referendum 2006, No. 422.

**Cross References**

**Learning Community Reorganization Act**, see section 79-4.117.

**Reorganization of School Districts Act**, see section 79-432.

**79-851 Teachers; status rights.**

The unified system or reorganized school district or districts may terminate, in accordance with sections 79-824 to 79-842, the contracts of employment of teachers whose employer's school district was or is to be closed, merged, or otherwise altered as provided for unified systems or reorganized school districts in section 79-850, except that such teachers shall for the purpose of reduction in force be considered teachers of the unified system or reorganized school district or districts and the teachers shall be given full credit for the years of teaching experience they had acquired as well as the same tenure or permanent status rights they had in the school district or districts affected by the unification or reorganization.

**Source:** Laws 1980, LB 844, § 2; Laws 1984, LB 634, § 1; Laws 1988, LB 520, § 6; R.S.1943, (1994), § 79-12,105; Laws 1996, LB 900, § 481; Laws 1998, LB 1219, § 2.

**Cross References**

**Reduction-in-force policy**, see sections 79-846 to 79-849.

**79-852 Collective-bargaining agreement; continued; effect.**

The collective-bargaining agreement of the school district or districts forming the unified system or reorganized school district with the largest number of teacher employees shall continue in full force and effect and govern all teachers in the unified system or reorganized school district until replaced by a successor agreement, and the teachers employed by the unified system or reorganized school district and previously employed by the school districts involved in the formation of the unified system or reorganized school district shall automatically be included in that bargaining unit but no certificated public school employee shall be compelled to join any organization or association. If only one collective-bargaining agreement is in effect in the school districts which are a part of the unification or reorganization, that collective-bargaining agreement shall continue in full force and effect until replaced by a successor agreement and the teachers employed by the other school districts involved in the unification or reorganization shall automatically be included in that bargaining unit. For purposes of the Industrial Relations Act, the unified system shall be deemed a public employer as defined in section 48-801.

**Source:** Laws 1980, LB 844, § 3; R.S.1943, (1994), § 79-12,106; Laws 1996, LB 900, § 482; Laws 1998, LB 1219, § 3; Laws 2011, LB397, § 17.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

**79-853 City of second class or village; merger with city of primary or metropolitan class; rights of teachers and employees preserved.**

A consolidation under sections 79-468 and 79-469 shall not affect the rights of the principals, teachers, janitors, and employees of any of the districts merged under such sections. They shall continue in the employ of the school district into which their former districts are merged. In determining their status, salaries, and other rights, their previous service with the merged district employing them at the time of the merger shall be counted as if they had been originally employed by the consolidated district.

**Source:** Laws 1917, c. 225, § 27, p. 557; C.S.1922, § 6636; C.S.1929, § 79-2627; R.S.1943, § 79-2630; Laws 1949, c. 256, § 222, p. 764; R.S.1943, (1994), § 79-535; Laws 1996, LB 900, § 483.

**79-854 Reduction in force; Retirement Incentive Plan; Staff Development Assistance; continued employment; notification; limitation.**

(1) If the unification or reorganization of two or more school districts will involve a reduction in force, all certificated employees from the district or districts involved in the unification or reorganization shall have, except as limited by subsection (2) of this section, the option to: (a) Retire under the Retirement Incentive Plan pursuant to section 79-855; (b) terminate employment and receive Staff Development Assistance pursuant to section 79-856; or (c) remain employed by the district subject to personnel policies and staffing requirements of the unified system or reorganized district or districts. Each certificated employee shall be notified in writing of the proposed unification or reorganization, the number of employees which will be reduced, and the availability of the Retirement Incentive Plan and Staff Development Assistance prior to such unification or reorganization. If the unification or reorganization will involve a reduction in force prior to the effective date of the unification or reorganization, the notification shall be made by March 15 of the school year in effect. If the unification or reorganization will not involve a reduction in force prior to the effective date of the unification or reorganization, the notification shall be made at least thirty calendar days prior to the effective date of the unification or reorganization but in no event later than March 15 of the calendar year in which action on the reduction in force will occur. The employee election to retire under the Retirement Incentive Plan or to terminate employment and receive Staff Development Assistance shall be made within fifteen calendar days after receiving the notification, or those options are waived.

(2) For each unification or reorganization, the number of certificated employees which receive either the Retirement Incentive Plan or Staff Development Assistance shall be limited to the number of certificated employees which are reduced due to the unification or reorganization. If the number of employees electing participation in the Retirement Incentive Plan or Staff Development Assistance exceed the number of employees which will be reduced, selection for participation shall be determined by the date and time of receipt of the employee election. Employee elections which are received first shall be selected, and all certificated employees in all districts involved in the unification or reorganization shall be treated equally in determining such selection.

**Source:** Laws 1996, LB 1050, § 33; Laws 1998, LB 1219, § 4.

**Cross References**

**Reduction-in-force policy**, see sections 79-846 to 79-849.

**79-855 Retirement Incentive Plan; eligibility; benefit; costs; allocation.**

(1) Except as limited by subsection (2) of section 79-854, all certificated employees from a district involved in a unification or reorganization who are at least fifty-five years of age on the date of unification or reorganization shall be eligible to participate in the Retirement Incentive Plan pursuant to this section if, within fifteen calendar days after receiving notification, the employee signs an agreement to retire effective on or prior to the effective date of the unification or reorganization. To receive a benefit under the Retirement Incentive Plan, a certificated employee must have completed five years of creditable service prior to the effective date of retirement.

(2) A qualified certificated employee who elects retirement under the Retirement Incentive Plan shall receive a benefit in the form of a lump-sum amount, payable in one or two payments. Such payments shall not be included in the determination of final average compensation pursuant to the School Employees Retirement Act. The payments to the certificated employee shall equal seven hundred dollars for each year of service with the district and shall not exceed twenty-four thousand five hundred dollars for each certificated employee receiving benefits under this section.

(3) The Retirement Incentive Plan shall be available to employees only prior to allocation of staff pursuant to section 79-857.

(4) Costs of the Retirement Incentive Plan, prior to the allocation of staff, shall be allocated among the reorganized districts or participating districts in a unification based upon the proportion of valuation each reorganized district receives or each participating district contains. Such costs shall not be included in general fund operating expenditures as defined in section 79-1003 for that fiscal year. Costs associated with agreements beyond the scope of the Retirement Incentive Plan shall be the sole responsibility of the reorganized district or unified system involved in the agreement.

(5) Payments made to employees pursuant to the Retirement Incentive Plan shall be made by the unified system or according to the reorganization plan and, if not specified in the plan, by the reorganized district receiving the largest valuation.

(6) Participation in an early retirement program, other than the Retirement Incentive Plan, shall not be available to transferring staff for a period of one year after the date of unification or reorganization.

**Source:** Laws 1996, LB 1050, § 34; Laws 1998, LB 1219, § 5.

**Cross References**

School Employees Act, see section 79-901.

**79-856 Staff Development Assistance; eligibility; agreement; contents; costs; allocation.**

(1) Except as limited by subsection (2) of section 79-854, all certificated employees from a district involved in a unification or reorganization who, within fifteen calendar days after receiving notification of the availability of Staff Development Assistance pursuant to section 79-854, terminate employment voluntarily, contract to waive any reduction-in-force rights pursuant to sections 79-846 to 79-849, and sign a Staff Development Assistance agreement, shall receive one year of Staff Development Assistance. Staff Development

Assistance shall be available to employees only prior to allocation of staff pursuant to section 79-857.

(2) Staff Development Assistance shall not be included in the determination of final average compensation pursuant to the School Employees Retirement Act.

(3) The Staff Development Assistance agreement shall specify that:

(a) A stipend equal to fifty percent of annual salary shall be contingent upon enrollment and attendance at a Nebraska state college or the University of Nebraska; or a stipend equal to twenty-five percent of annual salary shall be provided if not enrolled nor in attendance at a Nebraska state college or the University of Nebraska;

(b) The stipend will cease upon attainment of employment of twenty or more hours per week;

(c) The stipend will be paid in the same manner as contract payments for the most recent contract year;

(d) Tuition for two semesters, if applicable, will be paid directly to the Nebraska state college or the University of Nebraska and shall equal resident tuition charges plus fees of such school and will not include costs of books or other instructional materials; and

(e) All reduction-in-force rights pursuant to sections 79-846 to 79-849 are waived by signing the agreement.

(4) Costs of Staff Development Assistance, prior to the allocation of staff, shall be allocated among the reorganized districts or participating districts in a unification based upon the proportion of valuation each reorganized district receives or each participating district contains. Such costs shall not be included in general fund operating expenditures as defined in section 79-1003 for that fiscal year. Costs associated with agreements beyond the scope of Staff Development Assistance shall be the sole responsibility of the reorganized district involved in the agreement.

(5) Payments made to employees pursuant to Staff Development Assistance shall be made by the unified system or according to the reorganization plan and, if not specified in the plan, by the reorganized district receiving the largest valuation.

**Source:** Laws 1996, LB 1050, § 35; Laws 1998, LB 1219, § 6.

#### Cross References

School Employees Act, see section 79-901.

### **79-857 Allocation of certificated employees; procedure.**

(1) For reorganizations involving consolidation of school districts into one or more reorganized districts, staff not electing retirement pursuant to section 79-855 or Staff Development Assistance pursuant to section 79-856 shall be allocated prior to the effective date of reorganization as follows:

(a) All districts involved may enter into an agreement on the allocation of all certificated employees to one or more of the reorganized districts. No certificated employee shall be allocated to more than one district. Such agreement shall be signed by all the districts involved;

(b) All certificated employees from the district or districts who have not been allocated pursuant to subdivision (1)(a) of this section shall be totaled and

allocated among the reorganized districts based upon the proportion of students transferring to the reorganized district;

(c) All certificated employees from the district shall be treated equally in the allocation regardless of seniority. Staff shall not be given the option to choose the reorganized district in which to relocate. Random selection shall be utilized to allocate individual employees among all reorganized districts; and

(d) Once the selection and allocation is completed, employees from the district or districts shall retain years of service from the previous district for purposes of seniority. Within each reorganized district, employees from the receiving district shall not have priority over transferring employees. All reduction-in-force laws and policies shall apply.

(2) For unifications, staff not electing retirement pursuant to section 79-855 or Staff Development Assistance pursuant to section 79-856 shall be allocated prior to the effective date of the unification in compliance with an agreement signed by all participating districts. Once the selection and allocation is completed, employees shall retain years of service from the participating district for purposes of seniority. All reduction-in-force laws and policies shall apply.

**Source:** Laws 1996, LB 1050, § 36; Laws 1998, LB 1219, § 7; Laws 2005, LB 126, § 44; Referendum 2006, No. 422.

#### Cross References

Reduction-in-force policy, see sections 79-846 to 79-849.

#### **79-858 Other agreements; responsibility.**

Any agreements other than the Retirement Incentive Plan pursuant to section 79-855 or Staff Development Assistance pursuant to section 79-856 shall be the sole responsibility of the unified system or reorganized district.

**Source:** Laws 1996, LB 1050, § 37; Laws 1998, LB 1219, § 8.

#### (f) PROFESSIONAL PRACTICES COMMISSION

#### **79-859 Professional Practices Commission; declaration.**

The Legislature declares teaching in public schools in this state and the related services, including administrative and supervisory services, to be a profession, with all of the rights, responsibilities, and privileges accorded other recognized professions.

**Source:** Laws 1967, c. 549, § 1, p. 1813; R.S.1943, (1994), § 79-1280; Laws 1996, LB 900, § 484.

#### **79-860 Terms, defined.**

For purposes of sections 79-859 to 79-871:

- (1) Commission means the Professional Practices Commission;
- (2) Board means the State Board of Education; and
- (3) Commissioner means the Commissioner of Education.

**Source:** Laws 1993, LB 348, § 30; R.S.1943, (1994), § 79-1280.01; Laws 1996, LB 900, § 485.

**79-861 Professional Practices Commission; members; appointment; qualifications; terms; compensation; expenses; meetings; chairperson; quorum.**

(1) The Governor shall appoint a Professional Practices Commission of twelve members nominated by the teaching profession and existing teachers professional organizations. Members shall be representative of elementary classroom teachers, secondary classroom teachers, school administrators, and postsecondary education. Members shall be appointed for staggered terms of three years. No member may succeed himself or herself more than once. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. Compensation of members who are public employees shall not be reduced by the agency or body by which they are regularly employed for any absence from service occasioned by attendance upon the business of the commission or any panel, committee, or subcommittee of the commission. Each school district which employs a member of the commission and which is required to employ a person to replace such member during his or her attendance at meetings of the commission or any panel, committee, or subcommittee of the commission shall be reimbursed from the Professional Practices Commission Fund for the expense the district incurs from employing a replacement.

(2) The members of the commission shall elect a chairperson pursuant to the working rules of the commission. The chairperson shall call meetings of the commission, preside at all meetings of the commission en banc, assign the work of the commission to the members, and perform such other supervisory duties as required.

(3) A majority of the commission members shall constitute a quorum to transact business. A hearing panel of not less than seven commission members shall hear cases brought before the commission. Members of the hearing panel shall be assigned on a rotating basis. For purposes of hearings, the act or decision of a majority of the commission members sitting on the hearing panel shall in all cases be deemed the final act or decision of the commission.

**Source:** Laws 1967, c. 549, § 2, p. 1813; Laws 1973, LB 321, § 1; Laws 1977, LB 540, § 2; Laws 1981, LB 204, § 158; Laws 1993, LB 348, § 31; R.S.1943, (1994), § 79-1281; Laws 1996, LB 900, § 486.

**79-862 Commission; clerk; duties; additional personnel.**

The commission shall, with the advice and consent of the Governor, appoint a clerk of the commission who shall hold office at the pleasure of the commission. The clerk shall, under the direction of the chairperson of the commission, keep a complete and accurate record of the proceedings of the commission, record all pleadings and other papers filed with the commission, issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission directs. The clerk shall not be a member of the commission and shall not participate in hearings before the commission except to schedule and make other arrangements for the conduct of hearings.

The commission may also appoint or retain such other persons as it may deem necessary for the performance of its functions and shall prescribe their duties, fix their compensation, and provide for reimbursement of their expenses

as provided in sections 81-1174 and 81-1177 within the amounts available in the budget of the commission.

**Source:** Laws 1969, c. 731, § 5, p. 2767; Laws 1981, LB 204, § 159; Laws 1993, LB 348, § 32; Laws 1994, LB 1310, § 11; R.S.1943, (1994), § 79-1281.01; Laws 1996, LB 900, § 487.

**79-863 Commission; clerk; salary; expenses.**

The clerk of the commission shall receive such salary as the commission with the approval of the Governor determines. Such salary shall be payable in the same manner as the salaries of other state employees, and the clerk shall be reimbursed for his or her actual expenses incurred in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1993, LB 348, § 33; R.S.1943, (1994), § 79-1281.02; Laws 1996, LB 900, § 488.

**79-864 Commission; court reporter; duties; how paid.**

The commission shall appoint a certified court reporter to report and transcribe all testimony given in hearings and trials before the commission. The reporter shall be paid from the budget of the commission.

**Source:** Laws 1993, LB 348, § 34; R.S.1943, (1994), § 79-1281.03; Laws 1996, LB 900, § 489.

**79-865 Commission; legal counsel; duties.**

The commission may, on a case-by-case basis, retain legal counsel to sit with any hearing panel of the commission during hearings to advise the hearing panel on questions of law.

**Source:** Laws 1993, LB 348, § 35; R.S.1943, (1994), § 79-1281.04; Laws 1996, LB 900, § 490.

**79-866 Board; powers and duties.**

(1) The board shall adopt and promulgate rules and regulations establishing standards of professional practices for teachers and administrators holding certificates in areas including, but not limited to: (a) Ethical and professional performance; (b) competency; (c) continuance in professional service; and (d) contractual obligations. The board shall receive the advice and counsel of the commission in the adoption of such standards as the standards apply to the holders of public school certificates.

(2) The board may, for just cause, revoke or suspend any teacher's or administrator's certificate.

Violation of the standards established pursuant to this section, commission of an immoral act, or conviction of a felony under the laws of this state shall constitute just cause for the revocation or suspension of a teacher's or administrator's certificate by the board. The revocation or suspension of a certificate shall terminate the employment of such teacher or administrator. The board shall immediately notify the secretary or the school board or board of education of the school district where such teacher or administrator is employed of such revocation or suspension, shall notify the teacher or administrator of such

revocation or suspension, and shall record the action in the matter in the books or records of the State Board of Education.

**Source:** Laws 1967, c. 549, § 3, p. 1813; Laws 1969, c. 731, § 1, p. 2766; Laws 1971, LB 103, § 1; Laws 1984, LB 994, § 12; Laws 1989, LB 575, § 1; Laws 1993, LB 348, § 36; R.S.1943, (1994), § 79-1282; Laws 1996, LB 900, § 491.

A violation of the competency standards of the Professional Practices Commission is not, in itself, grounds for terminating the contract of a tenured teacher unless they constitute just cause within the meaning of former section 79-1254. *Schulz v. Board of Education*, 210 Neb. 513, 315 N.W.2d 633 (1982).

The competency standards of the Professional Practices Commission are not designed for use by a school board, and in the

absence of evidence that the school board has adopted those standards as their own, the school board may not terminate a tenured teacher's contract because of a violation of those standards unless the termination is the result of investigation conducted under former section 79-1282. *Schulz v. Board of Education*, 210 Neb. 513, 315 N.W.2d 633 (1982).

### **79-867 Teacher's or administrator's certificate; revocation; suspension; effect.**

The revocation of a person's teacher's or administrator's certificate by the board shall automatically revoke any and all Nebraska teachers' certificates held by the person. A teacher's or administrator's certificate which has been suspended shall be automatically reinstated at the end of the suspension if such certificate did not expire during the period of suspension. If the certificate expired during the period of suspension, the holder of the expired certificate may secure a new certificate by applying for and by meeting the certification requirements at the time of application for the new certificate. A person whose teacher's or administrator's certificate has been revoked may apply for a new certificate at the expiration of any period of ineligibility fixed by the board by applying for and by meeting the certification requirements at the time of application for the new certificate.

**Source:** Laws 1989, LB 575, § 4; Laws 1993, LB 348, § 37; R.S.1943, (1994), § 79-1282.01; Laws 1996, LB 900, § 492.

### **79-868 Board; standards violation; investigations; procedure.**

The board may request the commission to hold hearings and make recommendations to the board concerning alleged violations of standards of professional ethics and practices by holders of public school certificates. The board may employ hearing officers to hold hearings and make recommendations to the board concerning alleged violations of standards of professional ethics and practices by holders of nonpublic school certificates. The recommendations of the commission shall be made a part of the record of the board in all cases of public school certificate revocation or suspension and reinstatement of a revoked public school certificate. The commission may privately admonish or warn or publicly reprimand teachers and administrators holding public school certificates for violation of the standards established pursuant to section 79-866. Any public reprimand by the commission shall be reported to the State Department of Education. Any recommendation for the revocation or suspension of a public school certificate by the commission shall be reported to the board.

The commissioner may employ persons to investigate and prosecute cases of alleged violations of standards of professional ethics and practices before the commission or before the board and its hearing officers. The commissioner shall cause to be investigated expeditiously any complaint which is filed with him or her or which is otherwise called to his or her attention and which if

legally sufficient constitutes grounds for the revocation or suspension of a certificate or any other appropriate penalty set forth in section 79-866 or in the rules and regulations adopted and promulgated pursuant to such section. If following an investigation the commissioner determines that legally sufficient grounds exist for revocation or suspension of a certificate or for any other appropriate penalty set forth in such section or rules and regulations, the commissioner may, in his or her discretion, file a petition with the commission for adjudication of the matter or may reach an agreement for the appropriate sanction as allowed by the rules and regulations.

**Source:** Laws 1967, c. 549, § 4, p. 1813; Laws 1969, c. 731, § 2, p. 2767; Laws 1971, LB 103, § 2; Laws 1973, LB 321, § 2; Laws 1989, LB 575, § 2; Laws 1993, LB 348, § 38; R.S.1943, (1994), § 79-1283; Laws 1996, LB 900, § 493.

There exists no right of appeal to the State Board of Education from an order of the Nebraska Professional Practices Commission dismissing a complaint against a member of the teaching profession for a violation of professional practices criteria. *Berquist v. Campbell*, 210 Neb. 658, 316 N.W.2d 596 (1982).

The competency standards of the Professional Practices Commission are not designed for use by a school board, and in the

absence of evidence that the school board has adopted those standards as their own, the school board may not terminate a tenured teacher's contract because of a violation of those standards unless the termination is the result of investigation conducted under former section 79-1282. *Schulz v. Board of Education*, 210 Neb. 513, 315 N.W.2d 633 (1982).

### **79-869 Commission and board; rules and regulations.**

The commission and the board shall adopt and promulgate rules and regulations for the performance of their functions under sections 79-859 to 79-871. Recommendations may be made by the commission to the State Board of Education, to school boards or boards of education, and to postsecondary educational institutions which will promote improvement of education and the teaching profession.

**Source:** Laws 1967, c. 549, § 5, p. 1813; Laws 1969, c. 731, § 3, p. 2767; Laws 1989, LB 575, § 3; Laws 1993, LB 348, § 39; R.S.1943, (1994), § 79-1284; Laws 1996, LB 900, § 494.

#### **Cross References**

For other provisions for adopting rules and regulations, see the Administrative Procedure Act, section 84-901 et seq.

### **79-870 Commissioner; commission; board; witnesses; subpoena.**

In the performance of their functions under sections 79-859 to 79-871, the commissioner, the commission, and the board may subpoena witnesses and place them under oath.

**Source:** Laws 1967, c. 549, § 6, p. 1814; Laws 1992, LB 1001, § 29; Laws 1993, LB 348, § 40; R.S.1943, (1994), § 79-1285; Laws 1996, LB 900, § 495.

### **79-871 Commission; budget; adopt; costs and expenses; payment.**

All costs and expenses incurred by the commission in administering the provisions of sections 79-859 to 79-871 shall be paid as provided in section 79-810. The commission shall develop its own budget which shall be included as a program in the general budget of the State Department of Education.

**Source:** Laws 1967, c. 549, § 7, p. 1814; Laws 1969, c. 731, § 4, p. 2767; Laws 1977, LB 540, § 3; Laws 1993, LB 348, § 41; R.S.1943, (1994), § 79-1286; Laws 1996, LB 900, § 496; Laws 2003, LB 685, § 19.

## (g) PROFESSIONAL OR LABOR ORGANIZATIONS

**79-872 Teacher or administrator; professional or labor organization; deduction from wages.**

Any teacher or administrator employed by a school district who voluntarily participates in a professional or labor organization may authorize the withholding from his or her wages of an amount to be paid to the professional or labor organization. The school district shall make such deduction each month or pay period and pay the amount deducted to such professional or labor organization. The school district may charge an amount not to exceed the actual cost incurred by the school district for making such deductions.

**Source:** Laws 1979, LB 53, § 1; R.S.1943, (1994), § 79-12,101; Laws 1996, LB 900, § 497.

**79-873 Deduction from wages; authorization; form.**

An authorization for a deduction under section 79-872 shall be in writing, and the form to authorize shall also include a notice to the employee of his or her right to refuse authorization. The authorization shall continue in force until revoked in writing by the employee. The authorization may also authorize the professional or labor organization to certify annually the amount to be deducted from each employee's wages, and such certification shall bind the employee, the school district, and the organization.

**Source:** Laws 1979, LB 53, § 2; R.S.1943, (1994), § 79-12,102; Laws 1996, LB 900, § 498.

**79-874 Deductions; school district; liability.**

The school district shall not be liable to the professional or labor organization for any claim, demand, or cost arising out of the withholding of authorized amounts and the transmittal of deductions authorized by the school district employees under sections 79-872 and 79-873.

**Source:** Laws 1979, LB 53, § 3; R.S.1943, (1994), § 79-12,103; Laws 1996, LB 900, § 499.

## (h) STUDENT TEACHER OR INTERN

**79-875 Student teacher or intern, defined.**

For purposes of sections 79-875 to 79-878, student teacher or intern means a student who is enrolled in a postsecondary educational institution approved by the State Board of Education for teacher training and who is jointly assigned by such institution and a board of education to student-teach or intern under the direction of a regularly employed certificated teacher, principal, or other administrator. Student teaching may include duties granted to a certificated teacher under the rules and regulations of such board and any other part of the school program for which either the cooperating teacher or the principal is responsible.

**Source:** Laws 1971, LB 175, § 1; R.S.1943, (1994), § 79-1297; Laws 1996, LB 900, § 500.

**79-876 Student teacher or intern; protection; rules and regulations; comply.**

A student teacher or intern under the supervision of a certificated teacher, principal, or other administrator shall have the protection of the laws accorded the certificated teacher, principal, or other administrator and shall, while acting as such student teacher or intern, comply with all rules and regulations of the local board of education and observe all duties assigned certificated teachers.

**Source:** Laws 1971, LB 175, § 2; R.S.1943, (1994), § 79-1298; Laws 1996, LB 900, § 501.

**79-877 Student teacher or intern; responsibilities and duties.**

A cooperating teacher, in cooperation with the principal or other administrator and the representative of the teacher preparation institution, shall assign to the student teacher or intern responsibilities and duties that will provide adequate preparation for teaching.

**Source:** Laws 1971, LB 175, § 3; R.S.1943, (1994), § 79-1299; Laws 1996, LB 900, § 502.

**79-878 Student teacher or intern; terms, defined.**

Whenever in sections 79-875 to 79-878 board of education is referred to and the school that a student teacher or intern is referred to does not have a board of education, such term shall be the person or governing body that administers such school.

**Source:** Laws 1971, LB 175, § 4; R.S.1943, (1994), § 79-12,100; Laws 1996, LB 900, § 503.

(i) PROFESSIONAL STAFF DEVELOPMENT PROGRAM

**79-879 Repealed. Laws 1997, LB 347, § 59.**

(j) HELP EDUCATION LEAD TO PROSPERITY ACT

**79-880 Repealed. Laws 1996, LB 700, § 18.**

**79-881 Repealed. Laws 1996, LB 700, § 18.**

**79-882 Repealed. Laws 1996, LB 700, § 18.**

**79-883 Repealed. Laws 1996, LB 700, § 18.**

**79-884 Repealed. Laws 1996, LB 700, § 18.**

**79-885 Repealed. Laws 1996, LB 700, § 18.**

**79-886 Repealed. Laws 1996, LB 700, § 18.**

**79-887 Repealed. Laws 1996, LB 700, § 18.**

**79-888 Repealed. Laws 1996, LB 700, § 18.**

**79-889 Repealed. Laws 1996, LB 700, § 18.**

**79-890 Repealed. Laws 1996, LB 700, § 18.**

**79-891 Repealed. Laws 1996, LB 700, § 18.**

**79-892 Repealed. Laws 1996, LB 700, § 18.**

(k) INTERSTATE AGREEMENT ON QUALIFICATION  
OF EDUCATIONAL PERSONNEL

**79-893 Repealed. Laws 2003, LB 685, § 37.**

**79-894 Repealed. Laws 2003, LB 685, § 37.**

**79-895 Repealed. Laws 2003, LB 685, § 37.**

(l) MISCELLANEOUS

**79-896 Teachers; applicants; inquiries concerning religious affiliation prohibited.**

It shall be unlawful for any person to prepare or deliver any questionnaire, employment application, or information blank to any applicant for any teaching position in the public schools of this state if the questionnaire, employment application, or information blank contains any inquiry or reference to the religious affiliation or the religious belief of the applicant.

**Source:** Laws 1937, c. 180, § 1, p. 710; C.S.Supp.,1941, § 79-1426; R.S.1943, § 79-1406; Laws 1949, c. 256, § 368, p. 814; R.S.1943, (1994), § 79-1268; Laws 1996, LB 900, § 521.

**Cross References**

For constitutional provisions for religious freedom, see Article I, section 4, and Article VII, section 11, Constitution of Nebraska.

**79-897 Teachers; inquiries concerning religious affiliation; violations; penalty.**

Any person who violates the provisions of section 79-896 is guilty of a Class III misdemeanor. Violation of such section shall be cause for the removal of any superintendent, member of a board of education or school board, or other public school official.

**Source:** Laws 1937, c. 180, § 2, p. 711; C.S.Supp.,1941, § 79-1427; R.S.1943, § 79-1407; Laws 1949, c. 256, § 369, p. 815; Laws 1977, LB 39, § 258; R.S.1943, (1994), § 79-1269; Laws 1996, LB 900, § 522.

**79-898 Public schools; religious garments; wearing by teachers prohibited; penalty.**

Any teacher in any public school in this state who wears, in such school or while engaged in the performance of his or her duty, any dress or garb indicating the fact that such teacher is a member or an adherent of any religious order, sect, or denomination, shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in any sum not exceeding one hundred dollars and the costs of prosecution or shall be committed to the county jail for a period not exceeding thirty days or both.

**Source:** Laws 1919, c. 248, § 1, p. 1018; C.S.1922, § 6454; C.S.1929, § 79-1417; R.S.1943, § 79-1403; Laws 1949, c. 256, § 374, p. 816; R.S.1943, (1994), § 79-1274; Laws 1996, LB 900, § 523.

**79-899 Public schools; religious garb prohibited; enforcement; violation; penalty.**

In case of violation of section 79-898 by any teacher employed in any public school, notice of which having been previously given to the school board or board of education employing such teacher, the board shall suspend such teacher from employment in such school for the term of one year. In case of the second offense by such teacher the board shall disqualify permanently such teacher from teaching in such school. Any member of a board who fails to comply with the provisions of this section is guilty of a Class V misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars and costs of prosecution.

**Source:** Laws 1919, c. 248, § 2, p. 1018; C.S.1922, § 6455; C.S.1929, § 79-1418; R.S.1943, § 79-1404; Laws 1949, c. 256, § 375, p. 816; R.S.1943, (1994), § 79-1275; Laws 1996, LB 900, § 524.

**79-8,100 Teachers; solicitation by agents or salespersons prohibited; exceptions.**

It shall be unlawful for any peddler, agent, salesperson, or representative of any commercial enterprise, theatrical production, or play to call upon or to secure contracts with or solicit orders and business from any classroom teacher while the classroom teacher is actively engaged in the pursuit of his or her work as such. For purposes of this section, a teacher is actively engaged in the pursuit of his or her work between the hours of 8:30 a.m. and 5 p.m. on all days the school in which he or she is teaching is in session. The school board or board of education of any school district may designate such other hours as in their judgment seem best during which the classroom teacher or teachers of the district may be interviewed or solicited by the persons designated in this section.

**Source:** Laws 1929, c. 86, § 1, p. 339; C.S.1929, § 79-2133; R.S.1943, § 79-2141; Laws 1949, c. 256, § 372, p. 815; R.S.1943, (1994), § 79-1272; Laws 1996, LB 900, § 525.

**79-8,101 Teachers; solicitation by agents or salespersons; violation; penalty.**

Any person or persons who violate the purpose and intent of the provisions of section 79-8,100 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1929, c. 86, § 2, p. 339; C.S.1929, § 79-2134; R.S.1943, § 79-2142; Laws 1949, c. 256, § 373, p. 816; Laws 1977, LB 39, § 259; R.S.1943, (1994), § 79-1273; Laws 1996, LB 900, § 526.

**79-8,102 Repealed. Laws 2001, LB 797, § 55.**

**79-8,103 Repealed. Laws 2001, LB 797, § 55.**

**79-8,104 Repealed. Laws 2001, LB 797, § 55.**

**79-8,105 Repealed. Laws 2001, LB 797, § 55.**

**79-8,106 Epidemics; teachers' salaries; duty to pay.**

In case of epidemic sickness prevailing to such an extent that the school or schools in any school district shall be closed, teachers shall be paid their usual salaries in full for such time as the school or schools shall be closed.

**Source:** Laws 1919, c. 246, § 1, p. 1016; C.S.1922, § 6542; C.S.1929, § 79-2119; R.S.1943, § 79-2128; Laws 1949, c. 256, § 353, p. 809; R.S.1943, (1994), § 79-1253; Laws 1996, LB 900, § 531.

**79-8,107 Teachers; lunch period; exception.**

Every school district shall provide each teacher with an uninterrupted lunch period of not less than thirty minutes each school day, and no teacher shall be assigned teaching, supervisory, or other duties during such lunch period, except that school district attendance centers having less than two teachers shall be exempted from the provisions of this section.

**Source:** Laws 1967, c. 519, § 1, p. 1741; R.S.1943, (1981), § 79-547; Laws 1986, LB 820, § 1; R.S.1943, (1994), § 79-1254.10; Laws 1996, LB 900, § 532.

**79-8,108 Teachers and employees; pledge; form.**

All persons engaged in teaching in the public schools of the State of Nebraska and all other employees paid from public school funds, shall sign the following pledge:

I, . . . . ., do believe in the United States of America as a government of the people, by the people, for the people; whose just powers are derived from the consent of the governed; a democracy in a republic; an indissoluble nation of many sovereign states; a perfect union, one and inseparable; established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives and fortunes.

I acknowledge it to be my duty to inculcate in the hearts and minds of all pupils in my care, so far as it is in my power to do, (1) an understanding of the United States Constitution and of the Constitution of Nebraska, (2) a knowledge of the history of the nation and of the sacrifices that have been made in order that it might achieve its present greatness, (3) a love and devotion to the policies and institutions that have made America the finest country in the world in which to live, and (4) opposition to all organizations and activities that would destroy our present form of government.

**Source:** Laws 1951, c. 206, § 4, p. 767; R.S.1943, (1994), § 79-4,148; Laws 1996, LB 900, § 533.

**Cross References**

Oath of office, see sections 11-101 to 11-101.03.

**79-8,109 Teacher, administrator, or full-time employee; personnel file; access; written response; attach.**

Any teacher, administrator, or full-time employee of any public school district shall, upon his or her request, have access to his or her personnel file maintained by the district and shall have the right to attach a written response to any item in such file. Such teacher, administrator, or employee may in writing authorize any other person to have access to such file, which authorization shall be honored by the district. Such access and right to attach a written response shall not be granted with respect to any letters of recommendation

solicited by the employer which appear in the personnel file. No other person except school officials while engaged in their professional duties shall be granted access to such file, and the contents thereof shall not be divulged in any manner to any unauthorized person.

**Source:** Laws 1973, LB 370, § 1; R.S.1943, (1994), § 79-4,156; Laws 1996, LB 900, § 534.

**79-8,110 Class I school district; teachers; periodic report required; contents.**

Every teacher in a Class I school district shall make a report at the end of each nine-week period, to the secretary of the district, of the number of pupils attending the teacher's school, the names and ages of each, the days attended, and the studies pursued. No teacher will be entitled to receive pay in full for a term's service until the term summary is properly filled out and approved by the secretary.

**Source:** Laws 1881, c. 78, subdivision IX, § 2, p. 365; R.S.1913, § 6871; C.S.1929, § 6439; C.S.1929, § 79-1402; R.S.1943, § 79-1401; Laws 1949, c. 256, § 229, p. 766; Laws 1975, LB 493, § 1; R.S.1943, (1994), § 79-602; Laws 1996, LB 900, § 535.

(m) CRIMINAL HISTORY RECORD INFORMATION

**79-8,111 Repealed. Laws 2003, LB 685, § 37.**

**79-8,112 Repealed. Laws 2003, LB 685, § 37.**

**79-8,113 Repealed. Laws 2003, LB 685, § 37.**

**79-8,114 Repealed. Laws 2003, LB 685, § 37.**

**79-8,115 Repealed. Laws 2003, LB 685, § 37.**

**79-8,116 Repealed. Laws 2003, LB 685, § 37.**

**79-8,117 Repealed. Laws 2003, LB 685, § 37.**

(n) TEACHER SALARY TASK FORCE

**79-8,118 Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.**

**79-8,119 Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.**

**79-8,120 Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.**

**79-8,121 Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.**

**79-8,122 Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.**

**79-8,123 Repealed. Laws 2003, LB 1, § 1; Laws 2003, LB 67, § 34.**

(o) MASTER TEACHER PROGRAM ACT

**79-8,124 Act, how cited.**

Sections 79-8,124 to 79-8,131 shall be known and may be cited as the Master Teacher Program Act.

**Source:** Laws 2000, LB 1399, § 7.

## Cross References

Attracting Excellence to Teaching Program, see section 79-8,133.

Enhancing Excellence in Teaching Program, see section 79-8,137.01.

**79-8,125 Master Teacher Program; created; purpose.**

The Master Teacher Program is created. The purpose of the program is to build a group of recognized teachers of high achievement in the teaching profession. The State Department of Education shall administer the program.

**Source:** Laws 2000, LB 1399, § 8.

**79-8,126 Terms, defined.**

For purposes of the Master Teacher Program Act:

(1) Credentialing organization means a national nonprofit organization (a) approved by the State Department of Education, (b) the purpose of which is to establish high and rigorous standards in a broad range of educational areas for what accomplished teachers should know and be able to do, and (c) which issues credentials to teachers who demonstrate that they meet those standards; and

(2) Teacher means a person who holds a valid certificate to teach in Nebraska issued by the Commissioner of Education, who has been employed as a teacher for at least three years in a public or private school accredited or approved by the State Department of Education, and who continues to be employed as a teacher in such a school.

**Source:** Laws 2000, LB 1399, § 9.

**79-8,127 Annual salary bonus.**

In any year for which an appropriation is made for the Master Teacher Program, each teacher in the Master Teacher Program shall receive an annual salary bonus of five thousand dollars up to a statewide total of one million dollars. If the number of teachers qualifying for the bonus exceeds the number which the one million dollars would fully fund at the five-thousand-dollar level, the bonuses shall be reduced such that each teacher in the program receives the same amount and the statewide total does not exceed one million dollars. The State Department of Education shall allocate the annual salary bonus to each teacher in the program. Payment of such annual salary bonus shall not exceed the life of the credentials and shall be made only upon approval by the department of an application or upon reapproval each year after receiving the initial salary bonus.

**Source:** Laws 2000, LB 1399, § 10.

**79-8,128 Master teacher status.**

Teachers may achieve master teacher status by earning credentials from a credentialing organization. To be eligible for the Master Teacher Program, a teacher with master teacher status shall apply to the State Department of Education.

**Source:** Laws 2000, LB 1399, § 11.

**79-8,129 Master Teacher Program Fund; created; use; investment.**

The Master Teacher Program Fund is created. The fund shall be administered by the State Department of Education to carry out the purposes of the Master Teacher Program 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 2000, LB 1399, § 12.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-8,130 Registration award.**

A teacher who applies to a credentialing organization for credentials required for master teacher status shall be eligible for a registration award to pay for application and registration fees associated with obtaining the credentials. To receive a partial registration award in the amount of one-half of the associated fees, the teacher shall register with the State Department of Education within one year of application to the credentialing organization by submitting any documentation required by rule and regulation. To receive a final registration award in the amount of the remaining fees, the teacher shall notify the department that the teacher received the credentials and shall submit any documentation required by rule and regulation. Up to forty eligible teachers shall receive the first half of a registration award each year.

**Source:** Laws 2000, LB 1399, § 13.

**79-8,131 Rules and regulations.**

The State Board of Education shall adopt and promulgate rules and regulations to carry out the Master Teacher Program Act.

**Source:** Laws 2000, LB 1399, § 14.

(p) EXCELLENCE IN TEACHING ACT

**79-8,132 Act, how cited.**

Sections 79-8,132 to 79-8,140 shall be known and may be cited as the Excellence in Teaching Act and shall include the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

**Source:** Laws 2000, LB 1399, § 15; Laws 2009, LB547, § 3.

**Cross References**

Master Teacher Program Act, see section 79-8,124.

**79-8,133 Attracting Excellence to Teaching Program; created; terms, defined.**

The Attracting Excellence to Teaching Program is created. For purposes of the Attracting Excellence to Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by a regional accrediting agency recognized by the United States Department of Education as determined to be acceptable by the State Board of Education, (c) has a teacher education

program, and (d) if a privately funded college or university, has not opted out of the program pursuant to rules and regulations;

(3) Eligible student means an individual who (a) is a full-time student, (b) is enrolled in an eligible institution in an undergraduate or a graduate teacher education program working toward his or her initial certificate to teach in Nebraska, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d) for applicants applying for the first time on or after April 23, 2009, is a student majoring in a shortage area, and (e) for applicants applying to receive a loan during fiscal year 2011-12 or 2012-13, is a student who previously received a loan pursuant to the Attracting Excellence to Teaching Program in the fiscal year immediately preceding the fiscal year in which the new loan would be received;

(4) Full-time student means, in the aggregate, the equivalent of a student who in a twelve-month period is enrolled in twenty-four semester credit hours for undergraduate students or eighteen semester credit hours for graduate students of classroom, laboratory, clinical, practicum, or independent study course work;

(5) Majoring in a shortage area means pursuing a degree which will allow an individual to be properly endorsed to teach in a shortage area;

(6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the program; and

(7) Teacher education program means a program of study approved by the State Board of Education pursuant to subdivision (5)(g) of section 79-318.

**Source:** Laws 2000, LB 1399, § 16; Laws 2003, LB 685, § 20; Laws 2009, LB547, § 4; Laws 2011, LB333, § 6; Laws 2014, LB967, § 8. Effective date April 3, 2014.

#### **79-8,134 Attracting Excellence to Teaching Program; purposes.**

The purposes of the Attracting Excellence to Teaching Program are to:

(1) Attract outstanding students to major in shortage areas at the teacher education programs of Nebraska's postsecondary educational institutions;

(2) Retain resident students and graduates as teachers in the accredited or approved public and private schools of Nebraska; and

(3) Establish a loan contract that requires a borrower to obtain employment as a teacher in this state after graduation.

**Source:** Laws 2000, LB 1399, § 17; Laws 2009, LB547, § 5.

#### **79-8,135 Attracting Excellence to Teaching Program; administration; eligible students.**

(1) The department shall administer the Attracting Excellence to Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Graduate in the top quarter of his or her high school class or have a minimum cumulative grade-point average of 3.0 on a four-point scale in an eligible institution;

(b) Agree to complete a teacher education program at an eligible institution and, for applicants applying for the first time on or after April 23, 2009, to complete the major on which the applicant's eligibility is based; and

(c) Commit to teach in an accredited or approved public or private school in Nebraska upon (i) successful completion of the teacher education program for which the applicant is applying to the Attracting Excellence to Teaching Program and (ii) becoming certified pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than three thousand dollars per year. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through an eligible institution. Loans shall be funded pursuant to section 79-8,137.05.

**Source:** Laws 2000, LB 1399, § 18; Laws 2003, LB 685, § 21; Laws 2009, LB547, § 6.

**79-8,136 Transferred to section 79-8,137.05.**

**79-8,137 Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.**

(1)(a) Prior to receiving any money from a loan pursuant to the Attracting Excellence to Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall provide notice to the eligible student that funding for loans pursuant to the Attracting Excellence to Teaching Program terminates on June 30, 2016. Such contract shall be exempt from the requirements of sections 73-501 to 73-510.

(b) For eligible students who applied for the first time prior to April 23, 2009, the contract shall require that if (i) the borrower is not employed as a teacher in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan must be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract, and an appropriate penalty as determined by the department may be assessed. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(c) For eligible students who apply for the first time on or after April 23, 2009, the contract shall require that if (i) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska and teaching at least a portion of the time in the shortage area for which the loan was received for a time period equal to the number of years required for loan forgiveness pursuant to subsection (3) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five

consecutive years after receiving the initial loan under the program, then the loan shall be repaid with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to continue to be an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rule and regulation provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(2) If the borrower applied for the first time prior to April 23, 2009, and (a) successfully completes the teacher education program and becomes certified pursuant to sections 79-806 to 79-815, (b) becomes employed as a teacher in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. For each year that the borrower teaches in Nebraska pursuant to the contract, payments shall be forgiven in an amount equal to the amount borrowed for one year, except that if the borrower teaches in a school district that is in a local system classified as very sparse as defined in section 79-1003 or teaches in a school district in which at least forty percent of the students are poverty students as defined in section 79-1003, payments shall be forgiven each year in an amount equal to the amount borrowed for two years.

(3) If the borrower applies for the first time on or after April 23, 2009, and (a) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to the program and becomes certified pursuant to sections 79-806 to 79-815 with an endorsement in the shortage area for which the loan was received, (b) becomes employed as a full-time teacher teaching at least a portion of the time in the shortage area for which the loan was received in an approved or accredited school in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

**Source:** Laws 2000, LB 1399, § 20; Laws 2003, LB 685, § 22; Laws 2008, LB988, § 7; Laws 2009, LB547, § 7; Laws 2012, LB858, § 14; Laws 2013, LB497, § 4.

**79-8,137.01 Enhancing Excellence in Teaching Program; created; terms, defined.**

The Enhancing Excellence in Teaching Program is created. For purposes of the Enhancing Excellence in Teaching Program:

- (1) Department means the State Department of Education;
- (2) Eligible graduate program means a program of study offered by an eligible institution which results in obtaining a graduate degree;
- (3) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by a regional accrediting agency recognized by the United States Department of Education as determined to be acceptable by the State Board of Education, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the Enhancing Excellence in Teaching Program pursuant to rules and regulations;
- (4) Eligible student means an individual who (a) is a certificated teacher employed to teach in an approved or accredited school in Nebraska, (b) is enrolled in an eligible graduate program, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d) is majoring in a shortage area, curriculum and instruction, a subject area in which the individual already holds a secular teaching endorsement, or a subject area that will result in an additional secular teaching endorsement which the superintendent of the school district or head administrator of the private, denominational, or parochial school employing the individual believes will be beneficial to the students of such school district or school as evidenced by a statement signed by the superintendent or head administrator, and (e) is applying for a loan pursuant to the Enhancing Excellence in Teaching Program to be received at a time other than during fiscal year 2011-12 or 2012-13;
- (5) Majoring in a shortage area or subject area means pursuing a degree which will allow an individual to be properly endorsed to teach in such shortage area or subject area; and
- (6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the Enhancing Excellence in Teaching Program.

**Source:** Laws 2009, LB547, § 8; Laws 2010, LB1071, § 8; Laws 2011, LB333, § 7; Laws 2014, LB967, § 9.  
Effective date April 3, 2014.

#### **79-8,137.02 Enhancing Excellence in Teaching Program; purposes.**

The purposes of the Enhancing Excellence in Teaching Program are to:

- (1) Retain teachers in the accredited or approved public and private schools of Nebraska;
- (2) Improve the skills of existing teachers in Nebraska through the graduate education programs of Nebraska's postsecondary educational institutions; and
- (3) Establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from an eligible graduate program.

**Source:** Laws 2009, LB547, § 9; Laws 2010, LB1071, § 9.

**79-8,137.03 Enhancing Excellence in Teaching Program; administration; eligible student; loans.**

(1) The department shall administer the Enhancing Excellence in Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Agree to complete an eligible graduate program at an eligible institution and to complete the major on which the applicant's eligibility is based as determined by the department; and

(b) Commit to teach in an accredited or approved public or private school in Nebraska upon successful completion of the eligible graduate program for which the applicant is applying to the Enhancing Excellence in Teaching Program and to maintaining certification pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than one hundred seventy-five dollars per credit hour. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through the department. Loans shall be funded pursuant to section 79-8,137.05.

**Source:** Laws 2009, LB547, § 10; Laws 2010, LB1071, § 10.

**79-8,137.04 Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.**

(1) Prior to receiving any money from a loan pursuant to the Enhancing Excellence in Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall provide notice to the eligible student that funding for loans pursuant to the Enhancing Excellence in Teaching Program terminates on June 30, 2016. Such contract shall be exempt from the requirements of sections 73-501 to 73-510. The contract shall require that if (a) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section or (b) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subsection based upon mitigating circumstances.

(2) If the borrower (a) successfully completes the eligible graduate program and major for which the borrower is receiving a forgivable loan pursuant to the Enhancing Excellence in Teaching Program and maintains certification pursuant to sections 79-806 to 79-815, (b) maintains employment as a teacher in an approved or accredited school in this state, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. Beginning after the first two years of teaching full-

time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

**Source:** Laws 2009, LB547, § 11; Laws 2010, LB1071, § 11; Laws 2012, LB858, § 15; Laws 2013, LB497, § 5.

**79-8,137.05 Excellence in Teaching Cash Fund; created; use; investment.**

(1) The Excellence in Teaching Cash Fund is created. The fund shall consist of appropriations by the Legislature, transfers pursuant to section 9-812, and loan repayments, penalties, and interest payments received in the course of administering the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

(2) For all fiscal years except fiscal years 2011-12 and 2012-13, the department shall allocate on an annual basis up to four hundred thousand dollars in the aggregate of the funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students. The remaining available funds shall be distributed by the department to eligible students for the Enhancing Excellence in Teaching Program.

(3) For fiscal years 2011-12 and 2012-13, the department shall allocate on an annual basis funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions receiving applications from eligible students for loans to be received during such fiscal years. The distribution for each of fiscal years 2011-12 and 2012-13 shall be proportional based on the amounts applied for by eligible students at each institution, except that no more than one hundred percent of such amounts shall be distributed. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students.

(4) Any money remaining in the fund on August 1, 2016, shall be transferred to the Nebraska Education Improvement Fund on such date.

(5) Any money in the Excellence in Teaching 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 2000, LB 1399, § 19; Laws 2001, Spec. Sess., LB 3, § 6; R.S.1943, (2008), § 79-8,136; Laws 2009, LB547, § 12; Laws 2011, LB333, § 8; Laws 2014, LB967, § 10.  
Effective date April 3, 2014.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-8,138 Repayment tracking.**

The department has the administrative responsibility to track borrowers and to develop repayment tracking and collection mechanisms for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program. The department may contract for such services. When a loan has been forgiven pursuant to section 79-8,137 or 79-8,137.04, the amount forgiven may be taxable income to the borrower and the department shall provide notification of the amount forgiven to the borrower, the Department of Revenue, and the United States Internal Revenue Service if required by the Internal Revenue Code.

**Source:** Laws 2000, LB 1399, § 21; Laws 2009, LB547, § 13.

**79-8,139 Reports.**

(1) Each eligible institution shall file an annual report with the department for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program for any fiscal year in which the eligible institution receives funding to distribute to students pursuant to either or both of such programs containing such information as required by rule and regulation. On or before December 31 of each even-numbered year, the department shall submit a report to the Governor, the Clerk of the Legislature, and the Education Committee of the Legislature on the status of the programs, the status of the borrowers, and the impact of the programs on the number of teachers in shortage areas in Nebraska and on the number of teachers receiving graduate degrees in teaching endorsement areas in Nebraska. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically. Each report shall include information on an institution-by-institution basis, the status of borrowers, and a financial statement with a description of the activity of the Excellence in Teaching Cash Fund.

(2) Any report pursuant to this section which includes information about borrowers shall exclude confidential information or any other information which specifically identifies a borrower.

**Source:** Laws 2000, LB 1399, § 22; Laws 2009, LB547, § 14; Laws 2011, LB333, § 9; Laws 2012, LB782, § 154.

**79-8,140 Rules and regulations.**

The State Board of Education may adopt and promulgate rules and regulations to determine teacher shortage areas and to carry out the Excellence in Teaching Act.

**Source:** Laws 2000, LB 1399, § 23; Laws 2009, LB547, § 15.

**(q) TEACHER CORPS AMERICORPS EDUCATION AWARD PROGRAM****79-8,141 Teacher Corps AmeriCorps Education Award Program; duties; legislative intent.**

The Nebraska Volunteer Service Commission shall submit a program proposal to the Corporation for National Service to obtain funding for educational

awards. The awards shall be used by the commission to (1) provide incentives for new college graduates to establish their teaching careers in Nebraska and (2) provide incentives for experienced Nebraska teachers to pursue graduate degrees. It is the intent of the Legislature that the State Department of Education shall provide state funding to the Nebraska Volunteer Service Commission to contract for a program officer position for the Teacher Corps AmeriCorps Education Award Program if the Corporation for National Service commits to funding such program in Nebraska. State funding provided by the State Department of Education shall be used by the Nebraska Volunteer Service Commission to contract for a program officer position to meet the required monitoring and compliance responsibilities of the program.

**Source:** Laws 2000, LB 1399, § 24.

## ARTICLE 9

### SCHOOL EMPLOYEES RETIREMENT SYSTEMS

#### Cross References

#### Constitutional provisions:

For constitutional provisions relating to the investment of retirement funds, see Article XV, section 17, Constitution of Nebraska.

**Investments of retirement funds**, corporate trustee, see section 30-3209.

**Old age and survivors' insurance benefits**, see Chapter 68, article 6.

**Spousal Pension Rights Act**, see section 42-1101.

#### (a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

#### Section

- 79-901. Act, how cited.
- 79-902. Terms, defined.
- 79-903. Retirement system; established; purpose.
- 79-904. School retirement system; administration; retirement board; powers and duties; rules and regulations.
- 79-904.01. Board; power to adjust contributions and benefits; repayment of benefit.
- 79-905. Retirement board; duties.
- 79-906. Director; records; contents; employer education program.
- 79-907. Statement of information; board; powers and duties.
- 79-908. State Treasurer; duties.
- 79-909. Auditor of Public Accounts; annual audit; report.
- 79-910. Retirement system; membership; separate employment; effect.
- 79-910.01. Retirement system; participation.
- 79-911. Retirement system; emeritus member; retirement, when.
- 79-912. Retirement system; employees previously electing nonmembership; election to hold membership; effect.
- 79-913. Retirement system; membership; election of nonmembership; when.
- 79-914. Repealed. Laws 2002, LB 407, § 67.
- 79-915. Retirement system; membership; requirements.
- 79-916. Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.
- 79-917. New employee; participation in another governmental plan; how treated.
- 79-918. Current employee; participation in another governmental plan; how treated.
- 79-919. Retirement system; membership; employees of postsecondary schools excluded.
- 79-920. State school official; department employee; retirement system options.
- 79-921. Retirement system; membership; termination; employer; duty; reinstatement; application for restoration of relinquished creditable service; payment required.
- 79-922. Retiree; return to employment; effect; waiver of payments.
- 79-923. Reretirement; benefits; how computed.
- 79-924. Repurchase relinquished creditable service; credit for prior years of service; payment; rules and regulations; election; provisions applicable.

## SCHOOLS

### Section

- 79-925. Retirement system; prior member; repayment authorized; limitation.
- 79-926. Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.
- 79-927. Service credit; computation.
- 79-928. Board; verify service record.
- 79-929. Board; issue prior service certificate; modification.
- 79-930. Repealed. Laws 1996, LB 1076, § 48.
- 79-931. Retirement; when; application.
- 79-932. Retirement; deferment of payment; board; duties.
- 79-933. Retirement; member; amount of allowance.
- 79-933.01. Direct rollover; terms, defined; distributee; powers; board; duties.
- 79-933.02. Retirement system; accept payments and rollovers; limitations; board; duties.
- 79-933.03. Contributing member; credit for service in other schools; limitation; procedure; payment.
- 79-933.04. Contributing member; credit for leave of absence; limitation; procedure; payment.
- 79-933.05. Contributing member; credit for service in other schools; limitation; procedure; payment.
- 79-933.06. Contributing member; credit for leave of absence; limitation; procedure; payment.
- 79-933.07. Purchase of service credit or repurchase of relinquished creditable service; rules and regulations.
- 79-933.08. Purchase of service credit within twelve months of retirement; agreement authorized.
- 79-933.09. Retirement system; accept transfers; limitations; how treated.
- 79-934. Formula annuity retirement allowance; eligibility; formula; payment.
- 79-935. Retirement; increase in benefits; when applicable.
- 79-936. Repealed. Laws 1998, LB 1191, § 85.
- 79-937. Repealed. Laws 1998, LB 1191, § 85.
- 79-938. Retirement allowance; method of payment; election.
- 79-939. Retirement system; benefits; paid by retirement board.
- 79-940. Repealed. Laws 2011, LB 509, § 55.
- 79-941. Total monthly benefit, defined; how computed.
- 79-942. Supplemental retirement benefit; how computed.
- 79-943. Supplemental retirement benefit; not applicable; when.
- 79-944. Supplemental retirement benefit; receipt by beneficiary.
- 79-945. Supplemental retirement benefit; receipt by beneficiary; duration.
- 79-946. Retired Teachers Supplementary Benefits Fund; created; termination.
- 79-947. Adjusted supplemental retirement benefit; determination; computation; payment; funding.
- 79-947.01. Repealed. Laws 2011, LB 509, § 55.
- 79-947.02. Repealed. Laws 1999, LB 674, § 12.
- 79-947.03. Repealed. Laws 2011, LB 509, § 55.
- 79-947.04. Repealed. Laws 2011, LB 509, § 55.
- 79-947.05. Repealed. Laws 2011, LB 509, § 55.
- 79-947.06. Members prior to July 1, 2013; annual benefit adjustment; cost-of-living adjustment calculation method.
- 79-947.07. Employee who becomes a member on or after July 1, 2013; annual benefit adjustment; cost-of-living adjustment calculation method.
- 79-948. Retirement benefits; exemption from taxation and legal process; exception; payment for civil damages; conditions.
- 79-949. False or fraudulent actions; prohibited acts; refusal to furnish information; violations; penalties; denial of benefits.
- 79-950. Appeal; procedure.
- 79-951. Retirement; disability; conditions; application.
- 79-952. Retirement; disability; allowance; formula.
- 79-953. Retirement; disability; annual medical examination; refusal; effect.
- 79-954. Retirement; disability beneficiary; restoration to active service; effect; retention of allowance; when.

## SCHOOL EMPLOYEES RETIREMENT SYSTEMS

### Section

- 79-955. Termination of membership; accumulated contributions; return.
- 79-956. Death of member before retirement; contributions; how treated; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.
- 79-957. Termination of employment before retirement date; certified service record; statement of accumulated contributions; termination benefits, when.
- 79-958. Employee; employer; required deposits and contributions.
- 79-959. Account of member; credit with regular interest.
- 79-960. Employer; deduction; remittances; fees; interest charge.
- 79-961. Repealed. Laws 2000, LB 1192, § 28.
- 79-962. Contract of employment; contents.
- 79-963. Director; employer and employee; furnish information.
- 79-964. Employer; pay to board; withholding of excess deduction.
- 79-965. Payment of compensation less required deductions; discharge of claims for service.
- 79-966. School Retirement Fund; state deposits; amount; determination.
- 79-966.01. School Retirement Fund; annual actuarial valuations.
- 79-967. Board; determine rates of benefits; adjustments; distribution of gains and savings.
- 79-968. Retirement system; assets; funds; account; investment.
- 79-969. Repealed. Laws 2002, LB 407, § 67.
- 79-970. Repealed. Laws 2002, LB 407, § 67.
- 79-971. Accumulated contributions; use.
- 79-972. Repealed. Laws 2002, LB 407, § 67.
- 79-972.01. School Retirement Fund; created; use.
- 79-973. Contingent Account; created; use.
- 79-974. Expense Fund; created; use.
- 79-975. Repealed. Laws 2002, LB 407, § 67.
- 79-976. Investment services; charges; report; state investment officer; duty.
- 79-977. School district expenditures; not exempt from limitations on spending.
- 79-977.01. Limitation of actions.
- 79-977.02. Retirement system contributions, income, property, and rights; how treated.
- 79-977.03. Termination of system or contributions; effect.

### (b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

- 79-978. Terms, defined.
- 79-978.01. Act, how cited.
- 79-979. Class V school district; employees' retirement system; established.
- 79-980. Employees retirement system; administration; trustees; Class V Retirement System Board; liability.
- 79-981. Employees retirement system; board of education or Class V Retirement System Board; rules and regulations; administrator; employees compensation.
- 79-982. Employees retirement system; trustees; meetings; duties.
- 79-983. Employees retirement system; administrator; executive officer.
- 79-984. Employees retirement system; actuary; employment; duties.
- 79-985. Employees retirement system; attorney.
- 79-986. Employees retirement system; school district as treasurer; duties.
- 79-987. Employees retirement system; audit; cost; report.
- 79-988. Employees retirement system; membership; separate employment; effect.
- 79-988.01. Transfer of funds by the state.
- 79-989. Employees retirement system; board of education; records available.
- 79-990. Employees retirement system; time served in armed forces or on leave of absence; resignation for maternity purposes; effect.
- 79-991. Employees retirement system; member; prior service credit; how obtained.
- 79-992. Employees retirement system; discontinuance of employment; refunds; reemployment.
- 79-993. Reemployment; repay contributions; limitation; effect.
- 79-994. Employee of another school district; contribution; limitation; effect.
- 79-995. Reemployment; military service; leave of absence; contribution; limitation; effect.

## Section

- 79-996. Contributions; how paid; interest.
- 79-997. Employee of educational service unit; contribution; limitation; effect.
- 79-998. Additional service credits; accept payments and rollovers; limitations; how treated; tax consequences; direct transfer to retirement plan.
- 79-999. Employees retirement system; annuity; how credited.
- 79-9,100. Employees retirement system; formula retirement annuity; computation.
- 79-9,101. Employees retirement system; annuity; election; remaining payments.
- 79-9,102. Employees retirement system; annuity or other benefit; limitations.
- 79-9,103. Annuity payment; cost-of-living adjustment; additional adjustments.
- 79-9,104. Employees retirement system; annuities; benefits; exempt from claims of creditors; exceptions; payment for civil damages; conditions.
- 79-9,105. Employees retirement system; member; disability; benefits.
- 79-9,106. Employees retirement system; member; death; effect; survivorship annuity; amount; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.
- 79-9,107. Employees retirement system; funds; investment; violations; penalty.
- 79-9,108. Employees retirement system; funds; investment manager; duties; board of education or Class V Retirement System Board; investments; approve or disapprove.
- 79-9,109. Employees retirement system; investments; default of principal or interest; trustees; powers and duties.
- 79-9,110. Employees retirement system; investments; mortgages on real property, when.
- 79-9,111. Employees retirement system; investments; trustees; powers and duties.
- 79-9,112. Repealed. Laws 2001, LB 711, § 21.
- 79-9,113. Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.
- 79-9,114. Employees retirement system; federal Social Security Act; agreement; coverage group.
- 79-9,115. Employees retirement fund; created; use.
- 79-9,116. Applicability of sections.
- 79-9,117. Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.
- 79-9,118. Participation in retirement system; qualification.

## (a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

**79-901 Act, how cited.**

Sections 79-901 to 79-977.03 shall be known and may be cited as the School Employees Retirement Act.

**Source:** Laws 1991, LB 549, § 23; Laws 1993, LB 292, § 1; Laws 1994, LB 833, § 29; Laws 1995, LB 501, § 4; Laws 1996, LB 700, § 6; Laws 1996, LB 847, § 28; R.S.Supp., 1995, § 79-1501.01; Laws 1996, LB 900, § 536; Laws 1996, LB 1076, § 14; Laws 1997, LB 724, § 2; Laws 1998, LB 532, § 5; Laws 1998, LB 1191, § 44; Laws 2002, LB 407, § 21; Laws 2011, LB509, § 16; Laws 2013, LB553, § 2.

**79-902 Terms, defined.**

For purposes of the School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the School Retirement Fund together with regular interest thereon, compounded monthly, quarterly, semiannually, or annually;

(2) Beneficiary means any person in receipt of a school retirement allowance or other benefit provided by the act;

(3) Member means any person who has an account in the School Retirement Fund;

(4) County school official means (a) until July 1, 2000, the county superintendent or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate and (b) on or after July 1, 2000, the county superintendent, county school administrator, or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate;

(5) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06 and 79-933.08, 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 employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, nor service years for which member contributions are withdrawn and not repaid. Creditable service also does not include service rendered by a member for which the retirement board determines that the member was paid less in compensation than the minimum wage as provided in the Wage and Hour Act or service which the board determines was rendered with the intent to defraud the retirement system;

(6) Disability retirement allowance means the annuity paid to a person upon retirement for disability under section 79-952;

(7) Employer means the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation;

(8) Fiscal year means any year beginning July 1 and ending June 30 next following;

(9) 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;

(10) School employee means a contributing member who earns service credit pursuant to section 79-927. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular employees; (b) regular employees having retired pursuant to the School Employees Retirement Act who subsequently provide compensated service on a regular basis in any capacity; and (c) regular employees hired by a public school on an ongoing basis to assume the duties of other regular employees who are temporarily absent. Substitute employees, temporary employees, and employees who have not attained the age of eighteen years shall not be considered school employees;

(11) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;

(12) Public school means any and all schools offering instruction in elementary or high school grades, as defined in section 79-101, which schools are

supported by public funds and are wholly under the control and management of the State of Nebraska or any subdivision thereof, including (a) schools or other entities established, maintained, and controlled by the school boards of local school districts, except Class V school districts, (b) any educational service unit, and (c) any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;

(13) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;

(14) Retirement board or board means the Public Employees Retirement Board;

(15) Retirement system means the School Employees Retirement System of the State of Nebraska;

(16) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;

(17) School year means one fiscal year which includes not less than one thousand instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of the then legal school year;

(18) Service means employment as a school employee and shall not be deemed interrupted by (a) termination at the end of the school year of the contract of employment of an employee in a public school if the employee enters into a contract of employment in any public school, except a school in a Class V school district, for the following school year, (b) temporary or seasonal suspension of service that does not terminate the employee's employment, (c) leave of absence authorized by the employer for a period not exceeding twelve months, (d) leave of absence because of disability, or (e) 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 sections 79-951 to 79-953;

(19) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-935. The monthly payments shall be payable at the end of each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies or in accordance with the payment option chosen by the member;

(20) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(21) State deposit means the deposit by the state in the retirement system on behalf of any member;

(22) State school official means the Commissioner of Education and his or her professional staff who are required by law or by the State Department of Education to hold a certificate as such term is defined in section 79-807;

(23) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(24) Emeritus member means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b) who has thereafter been reemployed in any capacity by a public school, a Class V school district, or a school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

(25) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using twenty-five percent of the male table and seventy-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations except when a lump-sum settlement is made to an estate. If the lump-sum settlement is made to an estate, the interest rate will be determined by the Moody's Triple A Bond Index as of the prior June 30, rounded to the next lower quarter percent;

(26) Retirement date means (a) if the member has terminated employment, the first day of the month following the date upon which a member's request for retirement is received on a retirement application provided by the retirement system or (b) if the member has filed a retirement application but has not yet terminated employment, the first day of the month following the date on which the member terminates employment. An application may be filed no more than one hundred twenty days prior to the effective date of the member's initial benefit;

(27) Disability retirement date means the first day of the month following the date upon which a member's request for disability retirement is received on a retirement application provided by the retirement system if the member has terminated employment in the school system and has complied with sections 79-951 to 79-954 as such sections refer to disability retirement;

(28) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(29) 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 School Employees Retirement Act. Such credit shall not be included as years of creditable service in the benefit calculation;

(30)(a) Final average compensation means:

(i) Except as provided in subdivision (ii) of this subdivision:

(A) The sum of the member's total compensation during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six; or

(B) If a member has such compensation for less than thirty-six months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor; and

(ii) For an employee who became a member on or after July 1, 2013:

(A) The sum of the member's total compensation during the five twelve-month periods of service as a school employee in which such compensation was the greatest divided by sixty; or

(B) If a member has such compensation for less than sixty months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor.

(b) Payments under the Retirement Incentive Plan pursuant to section 79-855 and Staff Development Assistance pursuant to section 79-856 shall not be included in the determination of final average compensation;

(31) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(32) Current benefit means the initial benefit increased by all adjustments made pursuant to the School Employees Retirement Act;

(33) Initial benefit means the retirement benefit calculated at the time of retirement;

(34) 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;

(35)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year and includes (i) overtime pay, (ii) member retirement contributions, (iii) retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, and (iv) amounts contributed by the member to plans under sections 125, 403(b), 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 does not include (i) fraudulently obtained amounts as determined by the retirement board, (ii) amounts for unused sick leave or unused vacation leave converted to cash payments, (iii) insurance premiums converted into cash payments, (iv) reimbursement for expenses incurred, (v) fringe benefits, (vi) per diems paid as expenses, (vii) bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, or (viii) beginning on September 4, 2005, employer contributions made for the purposes of separation payments made at retirement and early retirement inducements as provided for in section 79-514.

(c) 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.

(d)(i) For purposes of section 79-934, in the determination of compensation for members on or after July 1, 2005, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than seven percent of the compensation base during the sixty months preceding the member's retirement shall be excluded unless (A) the member experienced a substantial change in employment position, (B) as verified by the school board, the excess compensation above seven percent occurred as the result of a collective-bargaining agreement between the employer and a recognized collective-bargaining unit or category of school employee, and the percentage increase in compensation above seven percent shall not be excluded for employees outside of a collective-bargaining unit or within the same category of school employee, or (C) the excess compensation occurred as the result of a districtwide permanent benefit change made by the employer for a category of school employee in accordance with subdivision (35)(a)(iv) of this section.

(ii) For purposes of subdivision (35)(d) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both;

(B) Compensation base means (I) for current members, employed with the same employer, the member's compensation for the plan year ending June 30, 2005, or (II) for members newly hired or hired by a separate employer on or after July 1, 2005, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of seven percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year; and

(C) Recognized collective-bargaining unit means a group of employees similarly situated with a similar community of interest appropriate for bargaining recognized as such by a school board.

(e)(i) For purposes of section 79-934, in the determination of compensation for members whose retirement date is on or after July 1, 2012, until July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than nine percent of the compensation base shall be excluded.

(ii) For purposes of subdivision (35)(e) of this section, compensation base means (A) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2012, or (B) for members newly hired or hired by a separate employer on or after July 1, 2012, the member's compensation for the first full plan year following the member's date of hiring.

(f)(i) Notwithstanding any other provision of this section, for purposes of section 79-934, in the determination of compensation for members whose retirement date is on or after July 1, 2013, that part of a member's compensa-

tion for the plan year which exceeds the member's compensation for the preceding plan year by more than eight percent during the capping period shall be excluded. Such member's compensation for the first plan year of the capping period shall be compared to the member's compensation received for the plan year immediately preceding the capping period.

(ii) For purposes of subdivision (35)(f) of this section:

(A) Capping period means the five plan years preceding the later of (I) such member's retirement date or (II) such member's final compensation date; and

(B) Final compensation date means the later of (I) the date on which a retiring member's final compensation is actually paid or (II) if a retiring member's final compensation is paid in advance as a lump sum, the date on which such final compensation would have been paid to the member in the absence of such advance payment;

(36) Termination of employment occurs on the date on which the member experiences a bona fide separation from service of employment with the member's employer, the date of which separation is determined by the end of the member's contractual agreement or, if there is no contract or only partial fulfillment of a contract, by the employer. A member shall not be deemed to have terminated employment if the member subsequently provides service to any employer participating in the retirement system provided for in the School Employees Retirement Act within one hundred eighty days after ceasing employment unless such service:

(a) Is bona fide unpaid voluntary service or substitute service, provided on an intermittent basis; or

(b) Is as provided in subsection (2) of section 79-920.

Nothing in this subdivision precludes an employer from adopting a policy which limits or denies employees who have terminated employment from providing voluntary or substitute service within one hundred eighty days after termination.

A member shall not be deemed to have terminated employment if the board determines that a claimed termination was not a bona fide separation from service with the employer or that a member was compensated for a full contractual period when the member terminated prior to the end date of the contract;

(37) 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 be of a long and indefinite duration;

(38) Substitute employee means a person hired by a public school as a temporary employee to assume the duties of regular employees due to a temporary absence of any regular employees. Substitute employee does not mean a person hired as a regular employee on an ongoing basis to assume the duties of other regular employees who are temporarily absent;

(39) Participation means qualifying for and making required deposits to the retirement system during the course of a plan year;

(40) Regular employee means an employee hired by a public school or under contract in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis for twenty or more hours per week. An employee hired as described in this subdivision to provide service for less than twenty hours per week but who provides service for an average of twenty hours

or more per week in each calendar month of any three calendar months of a plan year shall, beginning with the next full payroll period, commence contributions and shall be deemed a regular employee for all future employment with the same employer;

(41) Temporary employee means an employee hired by a public school who is not a regular employee and who is hired to provide service for a limited period of time to accomplish a specific purpose or task. When such specific purpose or task is complete, the employment of such temporary employee shall terminate and in no case shall the temporary employment period exceed one year in duration; and

(42) Relinquished creditable service means, with respect to a member who has withdrawn his or her accumulated contributions under section 79-955, the total amount of creditable service which such member has given up as a result of his or her election not to remain a member of the retirement system.

**Source:** Laws 1945, c. 219, § 1, p. 638; R.S.Supp., 1947, § 79-2901; Laws 1949, c. 256, § 435, p. 840; Laws 1953, c. 315, § 1, p. 1042; Laws 1961, c. 410, § 1, p. 1229; Laws 1963, c. 469, § 7, p. 1506; Laws 1963, c. 495, § 1, p. 1580; Laws 1965, c. 530, § 1, p. 1663; Laws 1965, c. 531, § 1, p. 1671; Laws 1967, c. 546, § 2, p. 1798; Laws 1969, c. 584, § 84, p. 2396; Laws 1969, c. 735, § 1, p. 2773; Laws 1971, LB 987, § 16; Laws 1975, LB 50, § 1; Laws 1984, LB 971, § 1; Laws 1985, LB 350, § 1; Laws 1986, LB 325, § 1; Laws 1986, LB 311, § 14; Laws 1987, LB 549, § 1; Laws 1988, LB 551, § 10; Laws 1988, LB 1170, § 1; Laws 1989, LB 506, § 9; Laws 1991, LB 549, § 24; Laws 1992, LB 1001, § 32; Laws 1994, LB 833, § 28; Laws 1996, LB 700, § 5; Laws 1996, LB 847, § 27; R.S.1943, (1994), § 79-1501; Laws 1996, LB 900, § 537; Laws 1996, LB 1076, § 13; Laws 1996, LB 1273, § 23; Laws 1997, LB 347, § 26; Laws 1997, LB 623, § 12; Laws 1997, LB 624, § 16; Laws 1997, LB 724, § 3; Laws 1998, LB 1191, § 45; Laws 1999, LB 272, § 91; Laws 1999, LB 538, § 1; Laws 1999, LB 674, § 3; Laws 2000, LB 1192, § 9; Laws 2001, LB 408, § 13; Laws 2002, LB 407, § 22; Laws 2003, LB 451, § 18; Laws 2005, LB 329, § 2; Laws 2005, LB 364, § 8; Laws 2005, LB 503, § 8; Laws 2006, LB 1019, § 8; Laws 2010, LB950, § 11; Laws 2011, LB509, § 17; Laws 2012, LB916, § 19; Laws 2013, LB263, § 13; Laws 2013, LB553, § 3; Laws 2014, LB1042, § 1.

Effective date April 17, 2014.

#### Cross References

**Public Employees Retirement Board**, see sections 84-1501 to 84-1513.

**Spousal Pension Rights Act**, see section 42-1101.

**Wage and Hour Act**, see section 48-1209.

Disability as defined in subsection (37) of this section has two components: (1) The individual must have a physical or mental impairment of the nature described, and (2) by reason of the impairment, the individual must be unable to engage in a substantially gainful activity. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

Statutory plan of retirement complete within itself is provided. *Ledwith v. Bankers Life Ins. Co.*, 156 Neb. 107, 54 N.W.2d 409 (1952).

### **79-903 Retirement system; established; purpose.**

A school retirement system is hereby established for the purpose of providing retirement allowances or other benefits for the school employees of the State of

Nebraska as provided in the School Employees Retirement Act. It shall have the powers and privileges of a corporation, insofar as may be necessary to carry out the act, shall be known as the School Employees Retirement System of the State of Nebraska, and by such name shall transact all business as provided in the act.

**Source:** Laws 1945, c. 219, § 2, p. 640; R.S.Supp.,1947, § 79-2902; Laws 1949, c. 256, § 436, p. 842; Laws 1967, c. 486, § 41, p. 1530; Laws 1969, c. 584, § 85, p. 2400; Laws 1969, c. 735, § 2, p. 2777; Laws 1971, LB 987, § 17; Laws 1991, LB 549, § 25; R.S.1943, (1994), § 79-1502; Laws 1996, LB 900, § 538; Laws 2011, LB509, § 18.

**Cross References**

For retirement system for employees of Class V school districts, see the Class V School Employees Retirement Act, section 79-978.01.

**79-904 School retirement system; administration; retirement board; powers and duties; rules and regulations.**

The general administration of the retirement system, except the investment of funds, is hereby vested in the retirement board. The board shall, by a majority vote of its members, adopt bylaws and adopt and promulgate rules and regulations, from time to time, to carry out the School Employees Retirement Act. The board shall perform such other duties as may be required to execute the act.

**Source:** Laws 1945, c. 219, § 3, p. 640; R.S.Supp.,1947, § 79-2903; Laws 1949, c. 256, § 437, p. 842; Laws 1967, c. 486, § 42, p. 1530; Laws 1969, c. 584, § 86, p. 2400; Laws 1971, LB 987, § 18; Laws 1991, LB 549, § 26; Laws 1995, LB 369, § 5; Laws 1996, LB 847, § 29; R.S.Supp.,1995, § 79-1503; Laws 1996, LB 900, § 539; Laws 2011, LB509, § 19.

**79-904.01 Board; power to adjust contributions and benefits; repayment of benefit.**

(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 School Employees Retirement Act, the board may 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 a material underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(2) If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 79-933, such member shall repay the benefit to the retirement system.

(3) 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 at the time of or prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

(4) The board shall not refund contributions made on compensation in excess of the limitations imposed by subdivision (35) of section 79-902.

**Source:** Laws 1996, LB 1076, § 30; Laws 2011, LB509, § 20; Laws 2013, LB263, § 14.

#### **79-905 Retirement board; duties.**

The retirement board shall:

(1) Determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of dispute between an individual and a department;

(2) Adopt rules and regulations for the management of the board;

(3) Prescribe the form in which employers report contributions, hours worked by school employees, payroll information, and other information necessary to carry out the board's duties;

(4) Keep a complete record of all proceedings taken at any meeting of the board;

(5) Employ a director and other assistance as may be necessary in the performance of its duties; and

(6) Obtain actuarial services pursuant to subdivision (2)(e) of section 84-1503.

**Source:** Laws 1967, c. 546, § 3, p. 1801; Laws 1969, c. 584, § 87, p. 2401; Laws 1991, LB 549, § 27; Laws 1995, LB 502, § 2; R.S.Supp., 1995, § 79-1503.01; Laws 1996, LB 900, § 540; Laws 1998, LB 1191, § 46; Laws 2000, LB 1192, § 10.

#### **79-906 Director; records; contents; employer education program.**

(1) The director in charge of the retirement system 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 School 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 employers and 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, § 28; R.S.1943, (1994), § 79-1503.02; Laws 1996, LB 900, § 541; Laws 2000, LB 1192, § 11; Laws 2005, LB 364, § 9; Laws 2005, LB 503, § 9; Laws 2012, LB916, § 20.

**79-907 Statement of information; board; powers and duties.**

(1)(a) On or before October 1, 2001, and at least every two years thereafter, the retirement board shall send to each contributing member of the retirement system by first-class mail, a statement of creditable service, reported salary, and other such information as is determined by the director of the Nebraska Public Employees Retirement Systems to be necessary in calculating the member's retirement benefit.

(b) If the member requests a modification or correction of his or her statement of information, the member shall provide documentation to the board supporting such modification or correction and provide clear and convincing evidence that the statement is in error. The board shall, within sixty days after receipt of the documentation supporting the modification or correction, determine whether the member has proven by clear and convincing evidence that the statement shall be modified or corrected. If the board determines that the member has provided clear and convincing evidence, the board shall modify or correct the statement. If the board determines that the member has not provided clear and convincing evidence, the board shall deny the modification or correction. In either case, the board shall notify the member. The member may appeal the decision of the board pursuant to section 79-950.

(c) The board has an ongoing fiduciary duty to modify or correct a member's statement if the board discovers an error in the information it has on record. A modification or correction shall be made within sixty days after the error is brought to the attention of the board.

(2) The board shall adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

**Source:** Laws 1998, LB 1191, § 47; Laws 2000, LB 1192, § 12; Laws 2004, LB 961, § 1; Laws 2005, LB 144, § 1.

**79-908 State Treasurer; duties.**

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. All disbursements therefrom shall be paid by him or her only upon vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

**Source:** Laws 1945, c. 219, § 6, p. 641; R.S.Supp.,1947, § 79-2906; Laws 1949, c. 256, § 440, p. 843; R.S.1943, (1994), § 79-1506; Laws 1996, LB 900, § 543; Laws 1997, LB 623, § 13.

**79-909 Auditor of Public Accounts; annual audit; report.**

The Auditor of Public Accounts shall make an annual audit of the retirement system and submit electronically an annual report to the Clerk of the Legislature of its condition. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the Auditor of Public Accounts. Expenses of the audit shall be paid from the Expense Fund.

**Source:** Laws 1945, c. 219, § 8, p. 641; R.S.Supp.,1947, § 79-2908; Laws 1949, c. 256, § 442, p. 843; Laws 1967, c. 546, § 4, p. 1802; Laws 1971, LB 987, § 20; Laws 1979, LB 322, § 38; R.S.1943, (1994), § 79-1508; Laws 1996, LB 900, § 544; Laws 2012, LB782, § 155.

**79-910 Retirement system; membership; separate employment; effect.**

(1) The membership of the retirement system shall be composed of (a) all persons who have an account in the School Retirement Fund, (b) all school employees who on or after July 1, 2002, must participate in the retirement system pursuant to section 79-910.01 and who have begun participation in the retirement system, and (c) emeritus members. The membership of the retirement system does not include persons described in sections 79-915 and 79-919 who are specifically excluded from membership in the retirement system.

(2) The membership of the retirement system also includes any person who prior to July 1, 2002, qualified for membership as follows: (a) All persons who become school employees after September 1, 1945, except those specifically excluded under sections 79-916 and 79-919, shall become members as soon as they become senior school employees, as senior school employee was defined in section 79-902 prior to July 1, 2002; (b) senior school employees on July 1, 1945, except those specifically excluded in sections 79-916 and 79-919, shall be members of the retirement system as of July 1, 1945, unless prior to October 1, 1945, any such employee shall have filed with the retirement board and with his or her employer a notice of his or her election not to be included in the membership of the system and a duly executed waiver of all the present and prospective benefits which would otherwise inure to him or her on account of his or her membership in the retirement system; and (c) emeritus members.

(3) Any school employee who qualifies for membership in the retirement system pursuant to subsection (1) or (2) of this section may not be disqualified from 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 retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

**Source:** Laws 1945, c. 219, § 9, p. 642; R.S.Supp.,1947, § 79-2909; Laws 1949, c. 256, § 443, p. 844; Laws 1951, c. 291, § 1, p. 964; Laws 1953, c. 315, § 2, p. 1045; Laws 1976, LB 30, § 1; Laws 1976, LB 673, § 2; Laws 1977, LB 349, § 1; Laws 1979, LB 391, § 5; Laws 1987, LB 549, § 2; R.S.1943, (1994), § 79-1509; Laws 1996, LB 900, § 545; Laws 1997, LB 624, § 17; Laws 2002, LB 407, § 23.

**79-910.01 Retirement system; participation.**

(1) Each person employed by a public school who is a school employee and who is qualified to participate in the retirement system shall participate in the retirement system.

(2) Public schools shall ensure that all school employees who qualify for participation pursuant to this section shall begin annual participation on July 1 of each plan year or upon such person's date of hire, if later than July 1, and that all required deposits are made on behalf of such employees.

**Source:** Laws 2002, LB 407, § 26; Laws 2010, LB950, § 12.

**79-911 Retirement system; emeritus member; retirement, when.**

Any emeritus member may retire upon his or her application to the retirement board, to be effective upon the termination of his or her employment in any public school or in any position covered by the retirement system.

**Source:** Laws 1953, c. 315, § 3, p. 1046; R.S.1943, (1994), § 79-1509.01; Laws 1996, LB 900, § 546; Laws 2000, LB 1192, § 13.

**79-912 Retirement system; employees previously electing nonmembership; election to hold membership; effect.**

All school employees not required to hold a certificate, diploma, or credentials to practice in a professional capacity who had previously elected not to be included in the retirement system pursuant to section 79-910 may, after January 1, 1978, and prior to July 1, 1978, file with the retirement board an election to be included in the membership of the retirement system, but such employees shall be treated as new employees and no service credit shall be granted for the years the employees elected out of the retirement system.

**Source:** Laws 1977, LB 349, § 2; Laws 1991, LB 549, § 29; R.S.1943, (1994), § 79-1509.02; Laws 1996, LB 900, § 547.

**79-913 Retirement system; membership; election of nonmembership; when.**

All school employees not required to hold a certificate, diploma, or credentials to practice in a professional capacity who are employed after January 1, 1978, and prior to July 1, 1978, shall have until June 30, 1978, to file with the retirement board an election not to be included in the membership of the retirement system established pursuant to the School Employees Retirement Act. The election shall be in writing on forms prescribed by the retirement board, and any person so electing waives all rights within the system except to a refund of his or her accumulated contributions. All such employees employed on or after July 1, 1978, shall become members of such retirement system as soon as they are employed and shall not have a right to elect out of such retirement system.

**Source:** Laws 1977, LB 349, § 3; R.S.1943, (1994), § 79-1509.03; Laws 1996, LB 900, § 548.

**79-914 Repealed. Laws 2002, LB 407, § 67.**

**79-915 Retirement system; membership; requirements.**

(1) Persons residing outside of the United States and engaged temporarily as school employees in the State of Nebraska shall not become members of the retirement system.

(2) On and after July 1, 2010, no school employee shall be authorized to participate in the retirement system provided for in the School Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a

qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

**Source:** Laws 1945, c. 219, § 11, p. 642; R.S.Supp.,1947, § 79-2911; Laws 1949, c. 256, § 445, p. 845; R.S.1943, (1994), § 79-1511; Laws 1996, LB 900, § 550; Laws 2010, LB950, § 13.

**79-916 Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.**

(1)(a) On July 1, 2004, the board shall transfer from the School Retirement Fund to the Service Annuity Fund an amount equal to the funded ratio of the retirement system which is equal to the market value of the retirement system assets divided by the actuarial accrued liability of the retirement system, times the actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Beginning July 1, 2013, such actuarial accrued liability shall be determined for each employee on a level percentage of salary basis. On or before July 1 of each fiscal year, the state shall deposit into the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, as of the end of the previous fiscal year of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Based on the fiscal year of the retirement system established pursuant to the Class V School Employees Retirement Act, the administrator of such system shall provide all membership information needed for the actuary engaged by the retirement board to determine the normal cost and the amortization payment of the unfunded actuarial accrued liability, as determined pursuant to section 79-966.01, to be paid by the state to the Service Annuity Fund each fiscal year as required by this subdivision.

(b) At the time of retirement of any employee who is a member of the retirement system established pursuant to the Class V School Employees Retirement Act, the retirement board shall, upon receipt of a certification of the administrator of such retirement system of the name, identification number, date of birth, retirement date, last date of employment, type of retirement, and number of years of service credited to such eligible employee at the date of retirement, transfer to such retirement system from the Service Annuity Fund the actuarial accrued liability of the service annuity to be paid by the state to the eligible employee for the years of service thus certified as provided for members of the School Employees Retirement System of the State of Nebraska under sections 79-933 and 79-952. Such transfer of the actuarial accrued liability to the retirement system established pursuant to the Class V School Employees Retirement Act shall be in lieu of the payment of the service annuity to which the employee would be entitled.

(c) The Service Annuity Fund is created. The fund shall consist of the amounts paid by the state and transferred from the School Retirement Fund pursuant to this section to pay the service annuity to be paid by the state to employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Any money in the Service Annuity 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) In addition to the transfer of the actuarial accrued liability of the service annuity to be paid by the state, the state shall also transfer to the funds of the Class V school district's retirement system an amount determined by multiplying the compensation of all members of such retirement system by the percent specified in subsection (2) of section 79-966 for determining the amount of the state's payment to the School Retirement Fund. The transfer shall be made annually on or before July 1 of each fiscal year.

**Source:** Laws 1945, c. 219, § 12, p. 642; R.S.Supp.,1947, § 79-2912; Laws 1949, c. 256, § 446, p. 845; Laws 1951, c. 292, § 1, p. 970; Laws 1965, c. 530, § 2, p. 1667; Laws 1967, c. 547, § 2, p. 1810; Laws 1967, c. 546, § 5, p. 1802; Laws 1969, c. 735, § 3, p. 2777; Laws 1971, LB 987, § 21; Laws 1984, LB 457, § 1; Laws 1987, LB 549, § 3; Laws 1988, LB 1170, § 2; Laws 1991, LB 549, § 30; R.S. 1943, (1994), § 79-1512; Laws 1996, LB 900, § 551; Laws 1997, LB 623, § 14; Laws 1998, LB 1191, § 48; Laws 2002, LB 407, § 24; Laws 2004, LB 1097, § 23; Laws 2011, LB509, § 21; Laws 2013, LB553, § 4.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

### **79-917 New employee; participation in another governmental plan; how treated.**

Within the first one hundred eighty days of employment, a school employee 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 or a part-time employee as defined in the Nebraska governmental plan in which the credit was earned. Such credit shall not be included as years of service in the benefit calculation. The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

**Source:** Laws 1995, LB 501, § 5; R.S.Supp.,1995, § 79-1514.10; Laws 1996, LB 900, § 552; Laws 2000, LB 1192, § 14; Laws 2002, LB 407, § 25; Laws 2013, LB263, § 15.

### **79-918 Current employee; participation in another governmental plan; how treated.**

For one year after September 9, 1995, any school employee 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. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time or a part-time employee as described in section 79-902. Such credit shall not be included as years of service in the benefit calculation.

**Source:** Laws 1995, LB 501, § 6; R.S.Supp.,1995, § 79-1514.11; Laws 1996, LB 900, § 553.

**79-919 Retirement system; membership; employees of postsecondary schools excluded.**

Any person who is employed by the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors shall not come under the provisions of the School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 13, p. 643; R.S.Supp.,1947, § 79-2913; Laws 1949, c. 256, § 447, p. 845; Laws 1971, LB 987, § 22; Laws 1991, LB 549, § 31; R.S.1943, (1994), § 79-1513; Laws 1996, LB 900, § 554; Laws 1996, LB 1076, § 15.

**79-920 State school official; department employee; retirement system options.**

(1) An individual who was, prior to July 19, 1980, a state school official and did not become a member of the State Employees Retirement System of the State of Nebraska pursuant to the State Employees Retirement Act may, within sixty days after September 1, 1986, elect to become a member of such system. An individual so electing shall pay the contributions required by such system when the service and minimum age requirements have been met.

(2)(a) An individual (i) who is or was previously a school employee or who was employed in an out-of-state or a Class V school district, (ii) who becomes employed by the State Department of Education after July 1, 1989, and (iii) who is a state school official may file with the retirement board within thirty days after employment an election to become or remain a member of the School Employees Retirement System of the State of Nebraska. Employees electing not to participate in the School Employees Retirement System shall participate in the State Employees Retirement System of the State of Nebraska.

(b) An individual shall be required to participate in the State Employees Retirement System if (i) the individual terminated employment from a public school participating in the School Employees Retirement System and retired pursuant to the School Employees Retirement Act and (ii) the employment by the State Department of Education began or will begin within one hundred eighty days after terminating employment from the school.

(3) An employee electing not to be covered by the School Employees Retirement System of the State of Nebraska under this section shall not be subject to section 79-957 but shall be allowed to retain his or her accumulated contribution in the system and continue to become vested in the state's accumulated contribution as well as the State Employees Retirement System of the State of Nebraska according to the following:

(a) The years of participation in the School Employees Retirement System of the State of Nebraska before an election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with the service requirements provided under section 79-931; and

(b) The years of participation in the School Employees Retirement System of the State of Nebraska before the election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the

election is made shall both be credited toward compliance with section 84-1321.

**Source:** Laws 1980, LB 818, § 2; Laws 1986, LB 325, § 13; Laws 1986, LB 311, § 22; Laws 1989, LB 506, § 12; R.S.1943, (1994), § 79-1565; Laws 1996, LB 900, § 555; Laws 1997, LB 623, § 15; Laws 2010, LB950, § 14; Laws 2011, LB509, § 22.

**Cross References**

State Employees Retirement Act, see section 84-1331.

**79-921 Retirement system; membership; termination; employer; duty; reinstatement; application for restoration of relinquished creditable service; payment required.**

(1) The membership of any person in the retirement system shall cease only if he or she (a) withdraws his or her accumulated contributions under section 79-955, (b) retires on a school or formula or disability retirement allowance, or (c) dies.

(2) The employer shall notify the board of the date upon which a termination has occurred. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary.

(3)(a) A former member of the retirement system who has withdrawn his or her accumulated contributions under section 79-955 shall be reinstated to membership in the retirement system if such person again becomes a school employee.

(b) The date of such membership shall relate back to the beginning of his or her original membership in the retirement system only if such school employee has repaid all amounts required in accordance with subsection (4) of this section. Unless and until all such amounts are repaid, the school employee shall be considered a new member, effective as of the date he or she again becomes a school employee.

(4)(a) With respect to any person who is reinstated to membership in the retirement system pursuant to subdivision (3)(a) of this section prior to April 17, 2014, and who files a valid and complete one-time application with the retirement board for the restoration of part or all of his or her relinquished creditable service prior to six years after April 17, 2014, but prior to termination, the following shall apply:

(i) Such member shall pay to the retirement system an amount equal to the previously withdrawn contributions for the creditable service to be restored, plus an amount equal to the actuarial assumed rate of return on such amount to the date of repayment; and

(ii) Payment for restoration of such relinquished creditable service must be completed within six years of April 17, 2014, or prior to termination, whichever is earlier.

(b) With respect to any person who is reinstated to membership in the retirement system pursuant to subdivision (3)(a) of this section on and after April 17, 2014, and who files a valid and complete one-time application with the retirement board for the restoration of part or all of his or her relinquished creditable service within five years after the date of such member's reinstatement,

ment to membership in the retirement system but prior to termination, the following shall apply:

(i) Such member shall pay to the retirement system an amount equal to the previously withdrawn contributions for the creditable service to be restored, plus an amount equal to the actuarial assumed rate of return on such amount to the date of repayment; and

(ii) Payment for restoration of such relinquished creditable service must be completed within five years of the date of such member's reinstatement to membership in the retirement system or prior to termination, whichever is earlier.

(5) If less than full payment is made by the member, relinquished creditable service shall be restored in proportion to the amounts repaid. Repayment may be made through direct payment, installment payments, an irrevocable payroll deduction authorization, cash rollover contributions pursuant to section 79-933.02, or trustee-to-trustee transfers pursuant to section 79-933.09.

**Source:** Laws 1945, c. 219, § 14, p. 643; R.S.Supp.,1947, § 79-2914; Laws 1949, c. 256, § 448, p. 845; Laws 1969, c. 735, § 4, p. 2778; Laws 1986, LB 311, § 16; Laws 1986, LB 325, § 2; R.S.1943, (1994), § 79-1514; Laws 1996, LB 900, § 556; Laws 1996, LB 1076, § 16; Laws 1997, LB 623, § 16; Laws 1997, LB 624, § 18; Laws 1999, LB 703, § 9; Laws 2001, LB 408, § 14; Laws 2004, LB 1097, § 24; Laws 2013, LB263, § 16; Laws 2014, LB1042, § 2.  
Effective date April 17, 2014.

#### **79-922 Retiree; return to employment; effect; waiver of payments.**

(1) Commencing on September 13, 1997, a beneficiary retired under the School Employees Retirement Act who returns to employment as a school employee, except for members retired under sections 79-951 to 79-954, shall continue receiving retirement benefits and shall be treated for all purposes of the act as a new school employee. A new member account shall be created for such school employee, and the member shall make contributions to such new account and shall receive service credit only for future service commencing from the date of reemployment.

(2) A person receiving a retirement benefit may accept employment in a postsecondary school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, a community college board of governors for any community college area established by section 85-1504, or any other state agency without having to waive retirement payments, without having to notify the retirement board, and without being subject to any withholding of future retirement payments relating to any retirement system which is provided for a public school.

**Source:** Laws 1985, LB 350, § 3; Laws 1991, LB 549, § 32; R.S.1943, (1994), § 79-1514.01; Laws 1996, LB 900, § 557; Laws 1996, LB 1076, § 17; Laws 1997, LB 624, § 19; Laws 1998, LB 1191, § 49.

#### **79-923 Reretirement; benefits; how computed.**

Until July 1, 1985, if a member of the retirement system retires, again becomes a school employee and a member of the retirement system, and then

reretires, the member's benefit upon reretirement shall consist of his or her original retirement benefit and the additional benefit earned as a result of employment following prior retirement. The original benefit shall be reinstated and shall continue in the same amount and in the same form or option as was previously elected. The additional benefit earned shall be computed as follows:

(1) A benefit shall be calculated based on the member's total service and compensation record and the statutes in effect at the time of reretirement. This benefit shall not be reduced for early retirement and shall be calculated under the life-only option;

(2) The member's original retirement benefit shall be calculated under the life-only option without any adjustments for early retirement, deferred retirement, or election of optional forms; and

(3) The additional benefit earned shall be the excess, if any, of the benefit calculated in subdivision (1) of this section over the benefit calculated in subdivision (2) of this section, adjusted if necessary to reflect early retirement or the election of an optional form other than the life-only option.

**Source:** Laws 1985, LB 350, § 2; R.S.1943, (1994), § 79-1514.02; Laws 1996, LB 900, § 558.

**79-924 Repurchase relinquished creditable service; credit for prior years of service; payment; rules and regulations; election; provisions applicable.**

The retirement board shall adopt and promulgate rules and regulations to allow for lump-sum or installment payments for school employees who elect to repurchase relinquished creditable service under section 79-921 or buy credit for prior years of service under sections 79-933.03 to 79-933.06 and 79-933.08. Any person who elects to repurchase relinquished creditable service or buy credit for prior years of service on an installment basis may be charged reasonable service costs, shall be credited with those prior years of service only as the money is actually received by the retirement system, and shall have paid to the retirement system all installments prior to the commencement of a retirement annuity.

**Source:** Laws 1986, LB 325, § 6; Laws 1990, LB 819, § 1; R.S.1943, (1994), § 79-1514.05; Laws 1996, LB 900, § 559; Laws 1996, LB 1076, § 18; Laws 1997, LB 724, § 4; Laws 2014, LB1042, § 3. Effective date April 17, 2014.

**79-925 Retirement system; prior member; repayment authorized; limitation.**

Any person who is now a school employee or becomes a school employee and who had elected out of the retirement system between July 1, 1945, and October 1, 1945, and subsequently elected into the retirement system may elect to repay the retirement system for any number of years of service for which he or she would have contributed had he or she not elected out of the retirement system. The amount to be repaid shall not exceed the amount of the contributions which would have been paid into the retirement system based on the compensation and years of service as a school employee as verified by school officials plus the interest which would have accrued on the amount under the

retirement system. This section shall not apply to school employees who retire prior to January 1, 1987.

**Source:** Laws 1987, LB 549, § 4; Laws 1991, LB 549, § 33; R.S.1943, (1994), § 79-1514.06; Laws 1996, LB 900, § 560.

**79-926 Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.**

(1) Under such rules and regulations as the retirement board adopts and promulgates, each person who was a school employee at any time prior to the establishment of the retirement system and who becomes a member of the retirement system shall, within two years after becoming a member, file a detailed statement of all service as a school employee rendered by him or her prior to the date of establishment of the retirement system. In order to qualify for prior service credit toward a service annuity, a school employee, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, must have completed four years of service on a part-time or full-time basis during the five calendar years immediately preceding July 1, 1945, or have completed eighteen years out of the last twenty-five years prior to July 1, 1945, full time or part time, and two years out of the five years immediately preceding July 1, 1945, full time or part time, or such school employee must complete, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, four years of service within the five calendar years immediately following July 1, 1945. In order to qualify for prior service credit toward a service annuity, a school employee who becomes a member of the retirement system on or before September 30, 1951, or from July 1, 1945, to the date of becoming a member shall have been continuously employed in a public school in Nebraska operating under any other regularly established retirement or pension system.

(2) Any person who, after having served or signing a contract to serve as a school employee, entered into and served or enters into and serves in the armed forces of the United States during a declared emergency or was drafted under a federal mandatory draft law into the armed forces of the United States during a time of peace, as described and prescribed under such rules and regulations as the retirement board adopts and promulgates, and who, within three calendar years after honorable discharge or honorable separation from active duty or within one year from the date of completion of training provided in the federal Servicemen's Readjustment Act of 1944 or the federal Veterans' Readjustment Assistance Act of 1952, became or becomes a school employee shall be credited, in determining benefits due such member from the retirement system, for a maximum of five years of the time actually served in the armed forces as if such person had been a school employee throughout such time.

(3) Under such rules and regulations as the retirement board adopts and promulgates, any school employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., 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 employer shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service.

**Source:** Laws 1945, c. 219, § 15, p. 643; R.S.Supp.,1947, § 79-2915; Laws 1949, c. 256, § 449, p. 845; Laws 1951, c. 291, § 2, p. 965; Laws 1953, c. 316, § 1, p. 1048; Laws 1975, LB 236, § 1; Laws 1992, LB 1001, § 33; Laws 1996, LB 847, § 30; R.S.1943, (1994), § 79-1515; Laws 1996, LB 900, § 561; Laws 1998, LB 1191, § 50; Laws 2011, LB509, § 23.

#### **79-927 Service credit; computation.**

(1) The board shall grant service credit pursuant to this section on an annual basis to members who participate during each fiscal year.

(2) For a member who is subject to the wage and hour provisions of the federal Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq., as such sections existed on January 1, 2002, service credit shall be calculated as follows:

(a) For each year during which a member provides compensated service to one or more school districts for one thousand or more hours, the member shall be credited one year of service credit; and

(b) For each year during which a member provides less than one thousand hours of compensated service to one or more school districts, the member shall be credited one one-thousandth of a year's service credit for each hour worked.

(3) For a member who is exempt from the wage and hour provisions of the federal Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq., as such sections existed on January 1, 2002, service credit shall be calculated as follows:

(a) Full-time service rendered for the regular school year in one or more public schools shall be equivalent to one year's service;

(b) Part-time service in one or more public schools shall be credited as individual years of fractional employment in proportion to the ratio the part-time service bears to the amount of time considered to be full-time service for the plan year; and

(c) If a member is employed for less than the full plan year, the member shall be granted a fractional year of service credit calculated pursuant to subdivision (a) or (b) of this subsection for only that portion of the plan year the member was employed.

(4) The board may adopt and promulgate rules and regulations for the granting of service credit in accordance with this section, but in no case shall more than one year of service be granted for all service in one plan year.

**Source:** Laws 1945, c. 219, § 16, p. 644; R.S.Supp.,1947, § 79-2916; Laws 1949, c. 256, § 450, p. 846; Laws 1971, LB 987, § 23; Laws 1986, LB 546, § 1; Laws 1991, LB 549, § 34; R.S.1943, (1994), § 79-1516; Laws 1996, LB 900, § 562; Laws 2002, LB 407, § 27.

#### **79-928 Board; verify service record.**

Subject to the restrictions in the School Employees Retirement Act and to such rules and regulations as the retirement board may adopt, the retirement

board shall verify, as soon as practicable after the filing of statements of service, the service claimed in the statements.

**Source:** Laws 1945, c. 219, § 17, p. 644; R.S.Supp.,1947, § 79-2917; Laws 1949, c. 256, § 451, p. 846; R.S.1943, (1994), § 79-1517; Laws 1996, LB 900, § 563.

**79-929 Board; issue prior service certificate; modification.**

Upon verification of the statements of service, the retirement board shall issue prior service certificates stating, for each member with a valid claim, the length of service in this state, rendered prior to the day of the establishment of the retirement system, with which the member is credited on the basis of his or her proof of service. Any member may, within one year from the date of issuance or modification of such certificate, request the retirement board to modify or correct his or her prior service certificate.

**Source:** Laws 1945, c. 219, § 18, p. 644; R.S.Supp.,1947, § 79-2918; Laws 1949, c. 256, § 452, p. 847; Laws 1951, c. 293, § 1, p. 972; R.S.1943, (1994), § 79-1518; Laws 1996, LB 900, § 564.

**79-930 Repealed. Laws 1996, LB 1076, § 48.**

**79-931 Retirement; when; application.**

(1) Upon filing a retirement application with the retirement system, a member who has completed thirty-five years of creditable service may retire at any age, a member who has completed at least five years of (a) creditable service plus (b) eligibility and vesting credit and is at least sixty years of age may retire, or a member who is at least sixty-five years of age upon termination may retire.

(2) Upon filing a retirement application with the retirement system, a member may retire upon termination if the member is at least fifty-five years of age, has acquired the equivalent of one-half year of service as a public school employee under the retirement system following July 1, 1997, and was a school employee on or after March 4, 1998, and the sum of the member's attained age and creditable service totals eighty-five.

**Source:** Laws 1945, c. 219, § 21, p. 645; R.S.Supp.,1947, § 79-2921; Laws 1949, c. 256, § 454, p. 847; Laws 1987, LB 549, § 5; Laws 1989, LB 506, § 10; R.S.1943, (1994), § 79-1520; Laws 1996, LB 900, § 566; Laws 1996, LB 1076, § 19; Laws 1998, LB 822, § 1.

**79-932 Retirement; deferment of payment; board; duties.**

(1) 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 member has both attained at least age seventy and one-half years and terminated his or her employment with the school system.

(2) 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 School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 22, p. 645; R.S.Supp.,1947, § 79-2922; Laws 1949, c. 256, § 455, p. 847; Laws 1951, c. 291, § 3, p. 966; Laws 1969, c. 735, § 5, p. 2779; Laws 1975, LB 44, § 1; Laws 1979, LB 391, § 6; Laws 1981, LB 463, § 1; Laws 1982, LB 287, § 4; Laws 1986, LB 311, § 17; Laws 1987, LB 296, § 3; Laws 1987, LB 549, § 6; R.S.1943, (1994), § 79-1521; Laws 1996, LB 900, § 567; Laws 2003, LB 451, § 19.

#### Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

### 79-933 Retirement; member; amount of allowance.

(1) Upon retirement under section 79-931, a member or emeritus member shall receive a school retirement allowance which shall consist of the sum of:

- (a) A savings annuity which shall be the actuarial equivalent, as determined by the retirement board, of the member's accumulated contributions at the time of his or her retirement or, in the case of an emeritus member, the savings annuity fixed by the retirement board at the time of his or her original retirement; and
- (b) a service annuity to be paid by the State of Nebraska.

(2) The amount of any individual service annuity for (a) a full-time school employee hired on or before April 1, 1988, who retires with thirty-five or more years of service or who retires under the provisions of disability retirement, (b) a full-time school employee who provided compensated service after April 1, 1988, but prior to July 19, 1996, if the service annuity commences on or after the member's sixty-fifth birthday, who retires with thirty-five or more years of service or who retires under the provisions of disability retirement, or (c) an emeritus member shall be three dollars and fifty cents per month for each year of creditable service commencing with his or her retirement on or after May 19, 1981. For employees not enumerated in subdivision (a) or (b) of this subsection or for employees hired on or after July 19, 1996, if the service annuity commences prior to the member's sixty-fifth birthday, it shall be on an actuarially reduced basis. Each school employee or emeritus member who retired before July 1, 1973, and who is receiving a service annuity as of that date shall have such service annuity 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 the service annuity commenced and July 1, 1973, except that such annuity shall not exceed three dollars and fifty cents monthly per year of service based on the same number of years of service that is currently being used to determine his or her service annuity. Such increased service annuity shall commence on July 1, 1973.

**Source:** Laws 1945, c. 219, § 23, p. 645; R.S.Supp.,1947, § 79-2923; Laws 1949, c. 256, § 456, p. 847; Laws 1951, c. 291, § 4, p. 966; Laws 1953, c. 315, § 4, p. 1046; Laws 1959, c. 382, § 6, p. 1326; Laws 1959, c. 414, § 1, p. 1387; Laws 1963, c. 495, § 2, p. 1383; Laws 1965, c. 531, § 2, p. 1674; Laws 1967, c. 546, § 6, p. 1803; Laws 1969, c. 735, § 6, p. 2779; Laws 1973, LB 445, § 1; Laws 1981, LB 248, § 1; Laws 1981, LB 369, § 2; Laws 1986, LB 325, § 5;

Laws 1986, LB 311, § 18; Laws 1987, LB 549, § 7; Laws 1991, LB 549, § 35; R.S.1943, (1994), § 79-1522; Laws 1996, LB 900, § 568; Laws 1996, LB 1076, § 20; Laws 2008, LB1147, § 8.

**79-933.01 Direct rollover; terms, defined; distributee; powers; board; duties.**

(1) For purposes of this section and section 79-933.02:

(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, (v) except for purposes of section 79-933.02, an individual retirement plan described in section 408A of the code, and (vi) 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 (vi) 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) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) 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, § 31; Laws 2002, LB 407, § 28; Laws 2012, LB916, § 21.

**79-933.02 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 sections 79-921, 79-933.03 to 79-933.06, and 79-933.08 if the contributions do not exceed the amount of payment required for the relinquished creditable service repurchased or service credits purchased by the member pursuant to such sections 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 purchase of service credits or repurchase of relinquished creditable service pursuant to section 79-921.

(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, § 32; Laws 1997, LB 623, § 17; Laws 1997, LB 724, § 5; Laws 2002, LB 407, § 29; Laws 2014, LB1042, § 4. Effective date April 17, 2014.

**79-933.03 Contributing member; credit for service in other schools; limitation; procedure; payment.**

(1) Under such rules and regulations as the board shall adopt and promulgate, a contributing member under contract or employed on July 19, 1996, may receive credit for not to exceed ten years of creditable teaching service rendered in public schools in another state or schools in this state covered by a school retirement system established pursuant to section 79-979, if such member files an application for service credit within three years of membership or reinstatement in the School Employees Retirement System of the State of Nebraska and makes payment into the retirement system of an amount equal to the required deposits he or she would have paid had he or she been employed in this state by a school covered by the retirement system, plus the interest which would have accrued on such amount. Payment must be completed within five years of membership or reinstatement in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made pursuant to subsection (1) of this section to the extent that the member does not receive credit for such service.

(3) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

**Source:** Laws 1996, LB 1076, § 22; Laws 1997, LB 623, § 18; Laws 1998, LB 1191, § 51; Laws 1999, LB 703, § 10; Laws 2011, LB509, § 24.

**79-933.04 Contributing member; credit for leave of absence; limitation; procedure; payment.**

(1) For contributing members under contract or employed on July 19, 1996, and under such rules and regulations as the board shall adopt and promulgate, any member who was away from his or her position while on a leave of absence from such position authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for such time as he or she was on such leave of absence. Such credit shall increase the benefits provided by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on compensation at the level received immediately prior to the leave of absence. Such credit shall be allowed if such member has paid into the retirement system an amount equal to the sum of the deductions from his or her compensation and any contribution which the school district would have been required to make had

he or she continued to receive compensation at the level received immediately prior to the leave of absence with such deposits plus interest which would have accrued on such deposits to be paid as the retirement board may direct within five years of his or her return to membership in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence the member must return to employment with a school district, other than a Class V school district, in the state within one year after termination of the leave of absence and must apply for such credit within three years of the return to membership in the retirement system.

**Source:** Laws 1996, LB 1076, § 23; Laws 1997, LB 623, § 19; Laws 1999, LB 703, § 11.

**79-933.05 Contributing member; credit for service in other schools; limitation; procedure; payment.**

(1) A contributing member may purchase service credit for not to exceed ten years of creditable service rendered in public schools in another state or schools in this state covered by the school retirement system established pursuant to section 79-979. The amount to be paid by the member for such service credit shall equal the actuarial cost to the School Employees Retirement System of the State of Nebraska for allowing such additional service credit to the employee. Payment shall be completed within five years after making the election to purchase service credit or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made pursuant to this section to the extent that the member does not receive credit for such service.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

(4) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

**Source:** Laws 1996, LB 1076, § 24; Laws 1997, LB 623, § 20; Laws 1998, LB 1191, § 52; Laws 1999, LB 703, § 12; Laws 2001, LB 408, § 15; Laws 2011, LB509, § 25.

**79-933.06 Contributing member; credit for leave of absence; limitation; procedure; payment.**

(1) Any contributing member may purchase service credit for time he or she was on a leave of absence authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district. Such credit shall increase the benefits provided by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination of employment, and retirement benefits. The amount to be paid by the member for such service credit shall equal the actuarial cost to the retirement system for allowing such additional service credit to the employee. Payment shall be completed within five years after such member's election to purchase service credit or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. Such leave shall not exceed four years in length, and in order to receive credit for the leave of absence the member must return to employment with a school district, other than a Class V school district, in the state within one year after termination of the leave of absence.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

**Source:** Laws 1996, LB 1076, § 25; Laws 1997, LB 623, § 21; Laws 1999, LB 703, § 13; Laws 2001, LB 408, § 16; Laws 2002, LB 407, § 30; Laws 2011, LB509, § 26.

**79-933.07 Purchase of service credit or repurchase of relinquished creditable service; rules and regulations.**

The board shall adopt and promulgate rules and regulations for the purchase of service credit or the repurchase of relinquished creditable service, which shall include, but not be limited to, the method for determining actuarial cost and interest requirements for payments other than one lump-sum payment.

**Source:** Laws 1996, LB 1076, § 26; Laws 2014, LB1042, § 5.  
Effective date April 17, 2014.

**79-933.08 Purchase of service credit within twelve months of retirement; agreement authorized.**

(1) An employer and a school employee who became a member before July 1, 2014, and who has completed at least five years of creditable service plus eligibility and vesting credit or a school employee who became a member for the first time on or after July 1, 2014, and who has completed ten or more years of creditable service may by agreement made in contemplation of retirement, to be effective within twelve months of the agreement, purchase service credit for such employee for not to exceed five years of creditable service. Such an agreement may be executed up to twelve months prior to the employee's retirement date. The agreement shall specify whether the school employee shall

pay for the service credits, whether the employer shall pay for the service credits, or whether both the employee and employer shall share the cost of the service credits. Such service credits shall be purchased for an amount equal to the actuarial cost to the retirement system for allowing such additional service credit to the employee.

(2) Payment for such service credits shall be completed prior to the employee's termination of employment date and may be made through direct payment, installment payments, or an irrevocable deduction authorization. If payments are made on an installment basis, interest shall be charged at the rate of regular interest.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

(4) The retirement board shall credit funds collected pursuant to this section to the Contingent Account pending the employee's retirement. If the employee does not retire within twelve months after the signing of the agreement made pursuant to this section, such funds shall be refunded, excluding interest earned, and the employee shall not be given credit for the service credit attempted to be purchased.

**Source:** Laws 1997, LB 724, § 1; Laws 1999, LB 703, § 14; Laws 2014, LB1042, § 6.  
Effective date April 17, 2014.

**79-933.09 Retirement system; accept transfers; limitations; how treated.**

The retirement system may accept as payment for repurchase of relinquished creditable service under section 79-921 or purchases of service credit made pursuant to the School 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 relinquished creditable service or service credit. The amount transferred shall not exceed the amount of payment required for the relinquished creditable service being repurchased or service credit being purchased, and the repurchase of such relinquished creditable service or the purchase of such service credit 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, § 31; Laws 2014, LB1042, § 7.  
Effective date April 17, 2014.

**79-934 Formula annuity retirement allowance; eligibility; formula; payment.**

(1) In lieu of the school retirement allowance provided by section 79-933, any member who is not an employee of a Class V school district and who becomes eligible to make application for and receive a school retirement allowance under section 79-931 may receive a formula annuity retirement allowance if it is greater than the school retirement allowance provided by section 79-933.

(2) Subject to the other provisions of this section, the monthly formula annuity in the normal form shall be determined by multiplying the number of years of creditable service for which such member would otherwise receive the service annuity provided by section 79-933 by (a) one and one-quarter percent of his or her final average compensation for a member who has acquired the

equivalent of one-half year of service or more as a public school employee under the retirement system following August 24, 1975, (b) one and one-half percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 17, 1982, (c) one and sixty-five hundredths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1984, (d) one and seventy-three hundredths percent of his or her final average compensation for a member actively employed as a public school employee under the retirement system or under contract with an employer on or after June 5, 1993, (e) one and eight-tenths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1995, and was employed as a public school employee under the retirement system or under contract with an employer on or after April 10, 1996, (f) one and nine-tenths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1998, and was employed as a public school employee under the retirement system or under contract with an employer on or after April 29, 1999, or (g) two percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 2000, who was employed as a public school employee under the retirement system or under contract with an employer on or after May 2, 2001, and who has not retired prior to May 2, 2001. Subdivision (2)(f) of this section shall not apply to a member who is retired prior to April 29, 1999. Subdivision (2)(g) of this section shall not apply to a member who is retired prior to May 2, 2001.

(3) If the annuity begins on or after the sixty-fifth birthday of a member, the annuity shall not be reduced. If the annuity begins prior to the sixty-fifth birthday of the member and the member has completed thirty or more years of creditable service and is at least sixty years of age, the annuity shall not be reduced. If the annuity begins prior to the sixtieth birthday of the member and the member has completed thirty-five or more years of creditable service, the annuity shall be actuarially reduced on the basis of age sixty-five. If the annuity begins on or after the sixtieth birthday of the member and the member has completed at least a total of five years of (a) creditable service plus (b) eligibility and vesting credit but less than thirty years of creditable service, the annuity shall be reduced by three percent for each year by which the member's age is less than the age at which the member's age plus years of creditable service would have totaled ninety or three percent for each year after the member's sixtieth birthday and prior to his or her sixty-fifth birthday, whichever provides the greater annuity.

(4) For retirements on or after March 4, 1998, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least fifty-five years of age, the annuity shall not be reduced. This subsection shall only apply to a member who has acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1997, and who was a school

employee on or after March 4, 1998. This subsection shall not apply to a member who is retired prior to March 4, 1998.

(5) Except as provided in section 42-1107, the normal form of the formula annuity shall be 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. Except as provided in section 42-1107, a member may elect to receive in lieu of the normal form of annuity an actuarially equivalent annuity in any optional form provided by section 79-938.

(6) All formula annuities shall be paid from the School Retirement Fund.

**Source:** Laws 1967, c. 546, § 7, p. 1804; Laws 1969, c. 736, § 1, p. 2785; Laws 1975, LB 50, § 2; Laws 1981, LB 248, § 2; Laws 1982, LB 609, § 1; Laws 1984, LB 457, § 2; Laws 1986, LB 546, § 2; Laws 1986, LB 325, § 7; Laws 1987, LB 549, § 8; Laws 1988, LB 160, § 1; Laws 1988, LB 1170, § 3; Laws 1991, LB 549, § 36; Laws 1993, LB 292, § 2; Laws 1996, LB 700, § 9; R.S.1943, (1994), § 79-1522.01; Laws 1996, LB 900, § 569; Laws 1996, LB 1050, § 7; Laws 1996, LB 1076, § 21; Laws 1996, LB 1273, § 24; Laws 1998, LB 822, § 2; Laws 1999, LB 674, § 4; Laws 2001, LB 711, § 2; Laws 2002, LB 407, § 32.

**79-935 Retirement; increase in benefits; when applicable.**

No provision of section 79-916, 79-934, 79-958, 79-960, or 79-966 which would result in an increase in benefits that would have been payable prior to July 1, 1984, shall apply to any person until that person has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1984.

No provision of section 79-934, 79-957, 79-958, or 79-960 which would result in an increase in benefits that would have been payable prior to July 1, 1986, shall apply to any person until that person has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1986.

No provision of section 79-934, 79-957, 79-958, or 79-960 which would result in an increase in benefits that would have been payable prior to April 1, 1988, shall apply to any person unless he or she is employed on such date and has acquired five hundred sixteen or more hours as a school employee under the retirement system during or after fiscal year 1987-88.

**Source:** Laws 1984, LB 457, § 7; Laws 1986, LB 325, § 8; Laws 1988, LB 160, § 2; R.S.1943, (1994), § 79-1522.02; Laws 1996, LB 900, § 570.

**79-936 Repealed. Laws 1998, LB 1191, § 85.**

**79-937 Repealed. Laws 1998, LB 1191, § 85.**

**79-938 Retirement allowance; method of payment; election.**

At any time before the retirement date a member may elect to receive his or her school retirement allowance or disability retirement allowance under any optional form specified in the group annuity contract, if one exists, or under

any optional form permitted by the retirement board, if no group annuity contract exists. Such optional annuity shall be the actuarial equivalent of the normal form of the annuity.

**Source:** Laws 1945, c. 219, § 31, p. 648; R.S.Supp.,1947, § 79-2931; Laws 1949, c. 256, § 464, p. 850; Laws 1951, c. 291, § 5, p. 967; Laws 1967, c. 546, § 8, p. 1806; Laws 1969, c. 735, § 9, p. 2781; R.S.1943, (1994), § 79-1530; Laws 1996, LB 900, § 573.

#### **79-939 Retirement system; benefits; paid by retirement board.**

All benefits under the retirement system shall be paid as directed by the retirement board. Except as provided in section 79-916, no member shall receive a retirement benefit from the retirement system covering years for which he or she is being paid a benefit under the Class V School Employees Retirement Act.

**Source:** Laws 1967, c. 546, § 18, p. 1809; Laws 1969, c. 584, § 90, p. 2401; R.S.1943, (1994), § 79-1557; Laws 1996, LB 900, § 574; Laws 1997, LB 623, § 24; Laws 1998, LB 497, § 1.

#### **Cross References**

**Class V School Employees Retirement Act**, see section 79-978.01.

#### **79-940 Repealed. Laws 2011, LB 509, § 55.**

#### **79-941 Total monthly benefit, defined; how computed.**

For purposes of sections 79-941 to 79-946, unless the context otherwise requires, total monthly benefit means the benefit that would have been received under a monthly life annuity with no refund or death benefit option even though a different option, as provided in section 79-938, has been selected. The total monthly benefit shall be computed as if the person had retired at age sixty-five or at the actual age of retirement, whichever is later.

**Source:** Laws 1980, LB 228, § 2; R.S.1943, (1994), § 79-1559; Laws 1996, LB 900, § 576; Laws 2011, LB509, § 27.

#### **79-942 Supplemental retirement benefit; how computed.**

For each person who qualifies under sections 79-941 to 79-946, the retirement board shall determine the value of the total monthly benefit being received from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V districts as provided by the Class V School Employees Retirement Act. From one hundred fifty-five dollars, the retirement board shall subtract the total monthly benefit. Such difference, if positive, shall be the supplemental benefit and shall be paid to the retired person each month from the School Retirement Fund, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person.

**Source:** Laws 1980, LB 228, § 3; Laws 1981, LB 141, § 2; R.S.1943, (1994), § 79-1560; Laws 1996, LB 900, § 577; Laws 1998, LB 497, § 3; Laws 2004, LB 1097, § 25; Laws 2011, LB509, § 28.

#### **Cross References**

**Class V School Employees Retirement Act**, see section 79-978.01.

#### **79-943 Supplemental retirement benefit; not applicable; when.**

Section 79-942 shall not apply to any retired person who receives a service annuity less than the amount provided in sections 79-933 and 79-938.

**Source:** Laws 1980, LB 228, § 4; Laws 1981, LB 141, § 3; R.S.1943, (1994), § 79-1561; Laws 1996, LB 900, § 578.

**79-944 Supplemental retirement benefit; receipt by beneficiary.**

If a beneficiary is receiving the annuity provided through the School Employees Retirement System of the State of Nebraska or through the retirement system for Class V districts as provided by the Class V School Employees Retirement Act, the supplemental benefit shall be the benefit that would be computed under section 79-942 had the deceased retired person still been alive. The beneficiary will continue to receive the supplemental benefit until the expiration of the annuity option selected by the member.

**Source:** Laws 1980, LB 228, § 5; Laws 1981, LB 141, § 4; R.S.1943, (1994), § 79-1562; Laws 1996, LB 900, § 579; Laws 1998, LB 497, § 4; Laws 2011, LB509, § 29.

**Cross References**

**Class V School Employees Retirement Act**, see section 79-978.01.

**79-945 Supplemental retirement benefit; receipt by beneficiary; duration.**

If a retiree eligible for the supplemental benefit under section 79-942 dies subsequent to July 19, 1980, the beneficiary shall be entitled to the supplemental benefit until the expiration of the annuity option selected by the retired member.

**Source:** Laws 1980, LB 228, § 6; R.S.1943, (1994), § 79-1563; Laws 1996, LB 900, § 580.

**79-946 Retired Teachers Supplementary Benefits Fund; created; termination.**

(1) The Retired Teachers Supplementary Benefits Fund is created. The fund shall be administered by the retirement board. This fund shall be considered an express obligation of the state. The appropriation for such fund shall be determined by the retirement board as of January 1 of each odd-numbered year and included in the biennial budget to be adopted by the regular session of the Legislature held in each odd-numbered year.

(2) On June 30, 2004, the Retired Teachers Supplementary Benefits Fund shall terminate and all assets of the fund shall be transferred to the School Retirement Fund. All obligations of the Retired Teachers Supplementary Benefits Fund shall be paid thereafter from the School Retirement Fund. The appropriation to provide supplementary benefits to retired teachers shall be determined as provided in subsection (1) of this section and shall be made to the School Retirement Fund in the same manner and amounts as had been made to the Retired Teachers Supplementary Retirement Fund.

**Source:** Laws 1980, LB 228, § 7; Laws 1986, LB 258, § 22; R.S.1943, (1994), § 79-1564; Laws 1996, LB 900, § 581; Laws 2004, LB 1097, § 26.

**79-947 Adjusted supplemental retirement benefit; determination; computation; payment; funding.**

(1) Commencing October 1, 1988, the retirement board shall determine an adjusted supplemental retirement benefit to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement for each person who is retired from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V school districts as provided by the Class V School Employees Retirement Act with twenty-five or more years of creditable service as of October 1, 1988.

(2) For each person who qualifies under subsection (1) of this section, the retirement board shall determine the value of the total monthly benefit being received from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V school districts as provided by the Class V School Employees Retirement Act and the supplemental benefit provided by section 79-942 if applicable. From two hundred fifty dollars, the board shall subtract the total monthly benefit. Such difference, if positive, shall be the adjusted supplemental retirement benefit and shall be paid to the retired person each month, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person. The adjusted supplemental retirement benefit shall be paid to a retired person during his or her life.

(3) The retirement board may buy a paid-up annuity for a retired person which guarantees the adjusted supplemental retirement benefit provided under this section.

(4) The adjusted supplemental retirement benefit provided under this section shall be funded from the Contingent Account but only from such income that is attributable to employer and employee contributions.

**Source:** Laws 1988, LB 1170, § 21; R.S.1943, (1994), § 79-1566; Laws 1996, LB 900, § 582; Laws 1998, LB 497, § 5; Laws 2002, LB 407, § 33; Laws 2011, LB509, § 30.

#### Cross References

Class V School Employees Retirement Act, see section 79-978.01.

**79-947.01 Repealed. Laws 2011, LB 509, § 55.**

**79-947.02 Repealed. Laws 1999, LB 674, § 12.**

**79-947.03 Repealed. Laws 2011, LB 509, § 55.**

**79-947.04 Repealed. Laws 2011, LB 509, § 55.**

**79-947.05 Repealed. Laws 2011, LB 509, § 55.**

**79-947.06 Members prior to July 1, 2013; annual benefit adjustment; cost-of-living adjustment calculation method.**

On July 1 of each year, for school employees who became members prior to July 1, 2013:

(1) The board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subdivision (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member

or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section;

(2) The current benefit paid to a retired member or beneficiary under this subdivision shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five 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 seventy-five percent. In any year in which applying the adjustment provided in subdivision (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subdivision, 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;

(3) The current benefit paid to a retired member or beneficiary under this subdivision shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent;

(4)(a) The current benefit paid to a retired member or beneficiary under subdivision (4) of this section shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in subdivision (4) of this section, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 79-952, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 79-956 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by subdivision (4) of this section.

(c) The monthly accrual rate under subdivision (4) of this section is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under subdivision (4) of this section is the total benefit received by a retired member or beneficiary pursuant to the School Employees Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) Beginning July 1, 2010, the minimum accrual rate under this subsection was twenty-four dollars and eleven cents. Beginning July 1, 2011, the minimum accrual rate under this subsection was twenty-five dollars and nine cents. Beginning July 1, 2012, the minimum accrual rate under this subsection was twenty-five dollars and forty-nine cents. Beginning July 1, 2013, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate;

(5) Each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first;

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires; and

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers 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 2011, LB509, § 32; Laws 2013, LB263, § 17; Laws 2013, LB553, § 5.

**79-947.07 Employee who becomes a member on or after July 1, 2013; annual benefit adjustment; cost-of-living adjustment calculation method.**

On July 1 of each year, for school employees who became members on or after July 1, 2013:

(1) The board shall determine the number of retired members or beneficiaries in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary. The benefit paid to a retired member or beneficiary under this section shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) one percent;

(2) Each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first;

(3) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires; and

(4) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers 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 2013, LB553, § 6.

**79-948 Retirement benefits; exemption from taxation and legal process; exception; payment for civil damages; conditions.**

(1) Except as provided in subsection (2) of this section, the right of a person to an annuity, an allowance, or any optional benefit under the School Employees Retirement Act, any other right accrued or accruing to any person or persons under such act, the various funds and account created thereby, and all the money, investments, and income thereof shall be exempt from any state, county, municipal, or other local tax, shall not be subject to execution, garnishment, attachment, 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 annuity, allowance, or benefit is subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuity, allowance, or benefit subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuity, allowance, or optional benefit from the retirement system, the court may order the payment of such annuity, allowance, or optional benefit under the retirement system for such civil damages, except that the annuities, allowances, or optional benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities, allowances, or optional benefits shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all annuities, allowances, or optional benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section by Laws 2012, LB916, shall apply to persons

convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1945, c. 219, § 53, p. 655; R.S.Supp.,1947, § 79-2953; Laws 1949, c. 256, § 486, p. 857; Laws 1969, c. 735, § 15, p. 2783; Laws 1971, LB 987, § 30; Laws 1986, LB 311, § 20; Laws 1988, LB 1170, § 19; Laws 1989, LB 506, § 11; Laws 1991, LB 549, § 44; R.S.1943, (1994), § 79-1552; Laws 1996, LB 900, § 583; Laws 1996, LB 1273, § 26; Laws 2002, LB 407, § 34; Laws 2012, LB916, § 22.

#### Cross References

Spousal Pension Rights Act, see section 42-1101.

### **79-949 False or fraudulent actions; prohibited acts; refusal to furnish information; violations; penalties; denial of benefits.**

(1) 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.

(2) Any school employee, member of a school board or board of education, or agent of any employer, who willfully fails or refuses to furnish to the retirement board upon its request and in the manner prescribed by it such information, data, or records, as may be necessary for carrying into effect the School Employees Retirement Act, shall be guilty of a Class V misdemeanor.

**Source:** Laws 1945, c. 219, § 54, p. 656; R.S.Supp.,1947, § 79-2954; Laws 1949, c. 256, § 487, p. 858; Laws 1971, LB 987, § 31; Laws 1977, LB 39, § 260; Laws 1991, LB 549, § 45; R.S.1943, (1994), § 79-1553; Laws 1996, LB 900, § 584; Laws 1998, LB 1191, § 54.

### **79-950 Appeal; procedure.**

All acts and decisions of the retirement board shall be subject to review, reversal, modification, or approval by the retirement board, on its own motion or on the complaint of a member, under such rules as the retirement board may prescribe. Any teacher or other person, who deems himself or herself aggrieved by any action of the retirement board, may appeal to and have the same reviewed by the retirement board under such rules as the retirement board shall prescribe. Any final order made by the retirement board after review may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1945, c. 219, § 45, p. 653; R.S.Supp.,1947, § 79-2945; Laws 1949, c. 256, § 478, p. 855; Laws 1988, LB 352, § 163; R.S.1943, (1994), § 79-1544; Laws 1996, LB 900, § 585.

#### Cross References

Administrative Procedure Act, see section 84-920.

**79-951 Retirement; disability; conditions; application.**

(1) A member shall be retired on account of disability, either upon his or her own application or the application of his or her employer or a person acting in his or her behalf, if a medical examination, made at the expense of the retirement system and conducted by a competent disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, selected by the retirement board, shows and the physician certifies to the retirement board that the member is unable to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or be of a long and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury.

(2) The member shall have five years from the date he or she terminates employment in a public school located in Nebraska in which to make application for disability retirement benefits if the disability is related to employment in a public school located in Nebraska. If the disability is not related to a public school located in Nebraska, the member shall have one year from the date he or she terminates employment in which to make application for disability retirement benefits. Any application for retirement on account of disability shall be made on a retirement application provided by the retirement system. Upon approval by the board, benefits shall begin on the disability retirement date.

**Source:** Laws 1945, c. 219, § 24, p. 646; R.S.Supp.,1947, § 79-2924; Laws 1949, c. 256, § 457, p. 848; Laws 1963, c. 495, § 3, p. 1584; Laws 1975, LB 50, § 3; Laws 1987, LB 549, § 9; Laws 1991, LB 549, § 37; R.S.1943, (1994), § 79-1523; Laws 1996, LB 900, § 586; Laws 1996, LB 1076, § 27; Laws 1997, LB 623, § 25; Laws 1998, LB 1191, § 55; Laws 1999, LB 538, § 2; Laws 2000, LB 1192, § 15; Laws 2004, LB 1097, § 28; Laws 2010, LB950, § 16.

If the Public Employees Retirement Board's medical examiner opines that the member is not disabled, the member may offer other medical evidence. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

Subsection (1) of this section ordinarily requires expert medical evidence to establish a disability. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

**79-952 Retirement; disability; allowance; formula.**

Upon retirement for disability, a member shall receive a disability retirement allowance which shall consist of a savings annuity and a service annuity computed in the manner specified in section 79-933 or, in lieu thereof, the formula annuity computed in the manner specified in section 79-934 without the reduction to the actuarial equivalent of the formula annuity deferred to the sixty-fifth birthday of the member.

**Source:** Laws 1945, c. 219, § 25, p. 646; R.S.Supp.,1947, § 79-2925; Laws 1949, c. 256, § 458, p. 848; Laws 1975, LB 50, § 4; R.S.1943, (1994), § 79-1524; Laws 1996, LB 900, § 587.

**79-953 Retirement; disability; annual medical examination; refusal; effect.**

The retirement board may require any disability beneficiary who has not yet attained the age of sixty-five years to undergo a medical examination once each year. Such an examination shall be made (1) at the place of residence of the

beneficiary or other place mutually agreed upon, (2) at the expense of the retirement system, and (3) by a physician, legally authorized to practice medicine under the laws of the state in which he or she practices, designated by the retirement board. If any disability beneficiary who has not yet attained the age of sixty-five years willfully refuses to submit to at least one such medical examination in any fiscal year, his or her allowance may be discontinued until his or her withdrawal of such refusal. If such refusal continues for one year, his or her rights in and to his or her disability retirement allowance may be revoked by the retirement board.

**Source:** Laws 1945, c. 219, § 26, p. 647; R.S.Supp.,1947, § 79-2926; Laws 1949, c. 256, § 459, p. 849; R.S.1943, (1994), § 79-1525; Laws 1996, LB 900, § 588; Laws 1997, LB 623, § 26.

**79-954 Retirement; disability beneficiary; restoration to active service; effect; retention of allowance; when.**

(1) Except as provided in subsection (2) of this section, if a disability beneficiary under the age of sixty-five years is restored to active service as a school employee or if the examining physician certifies that the person is no longer disabled for service as a school employee, the school or disability retirement allowance shall cease. If the beneficiary again becomes a school employee, he or she shall become a member of the retirement system. Any prior service certificate, on the basis of which his or her creditable service was computed at the time of his or her retirement for disability, shall be restored to full force and effect upon his or her again becoming a member of such retirement system.

(2) If a disability beneficiary under the age of sixty-five years obtains employment as a school employee and the examining physician certifies that the beneficiary has a permanent disability, the beneficiary shall retain his or her disability retirement allowance if the beneficiary works fewer than twenty hours per week.

**Source:** Laws 1945, c. 219, § 27, p. 647; R.S.Supp.,1947, § 79-2927; Laws 1949, c. 256, § 460, p. 849; R.S.1943, (1994), § 79-1526; Laws 1996, LB 900, § 589; Laws 2009, LB449, § 1; Laws 2013, LB553, § 7.

**79-955 Termination of membership; accumulated contributions; return.**

Upon termination of employment for any cause other than death or retirement, the retirement board shall, upon the member's demand, terminate his or her membership in the retirement system and cause to be paid to such member the accumulated contributions standing to the credit of his or her individual account in the School Retirement Fund. Any member who attains or has attained membership in another Nebraska state or school retirement system authorized by the Legislature and who elects not to be or remain a member of the School Employees Retirement System of the State of Nebraska shall have his or her accumulated contributions returned to him or her forthwith.

**Source:** Laws 1945, c. 219, § 28, p. 647; R.S.Supp.,1947, § 79-2928; Laws 1949, c. 256, § 461, p. 849; Laws 1965, c. 532, § 1, p. 1676; Laws 1967, c. 555, § 1, p. 1825; Laws 1969, c. 735, § 7, p. 2780; Laws

1976, LB 30, § 3; Laws 1988, LB 1170, § 4; R.S.1943, (1994), § 79-1527; Laws 1996, LB 900, § 590; Laws 1997, LB 624, § 20; Laws 1998, LB 1191, § 56; Laws 2011, LB509, § 31.

**79-956 Death of member before retirement; contributions; how treated; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.**

(1) If a member dies before his or her retirement date, his or her accumulated contributions shall be paid to his or her estate, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the person he or she has nominated by designation duly executed and filed with the retirement board. Except for payment to an alternative payee pursuant to a qualified domestic relations order, if no legal representative or beneficiary applies for such accumulated contributions within five years following the date of the deceased member's death, the contributions shall be distributed in accordance with the Uniform Disposition of Unclaimed Property Act.

(2) When the deceased member has twenty years or more of creditable service regardless of age or dies on or after his or her sixty-fifth birthday and leaves a surviving spouse who has been designated as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance, including interest, plus an additional one hundred one percent of the member's contribution account balance, including interest, or (b) an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (i) on the date of death if his or her age at death is sixty-five years or more or (ii) at age sixty-five years if his or her age at death is less than sixty-five years.

(3) When the deceased member who was a school employee on or after May 1, 2001, has not less than five years of creditable service and less than twenty years of creditable service and dies before his or her sixty-fifth birthday and leaves a surviving spouse who has been designated in writing as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance with interest plus an additional one hundred one percent of the member's contribution account balance with interest or (b) an annuity payable monthly for the surviving spouse's lifetime which shall be equal to the benefit amount that had accrued to the member at the date of the member's death, commencing when the member would have reached age sixty, or the member's age at death if greater, reduced by three percent for each year payments commence before the member would have reached age sixty-five, and adjusted for payment in the form of a one-hundred-percent joint and survivor annuity.

(4) If the requirements of subsection (2) or (3) of this section are not met, then the beneficiary or the estate, if the member has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such member plus regular interest, except that commencing on January 1, 2006, an application for benefits under subsec-

tion (2) or (3) of this section shall be deemed to have been timely filed if the application is received by the retirement system within twelve months after the date of the death of the member.

(5) Benefits to which a surviving spouse, beneficiary, or estate of a member shall be entitled pursuant to this section shall commence immediately upon the death of such member.

(6) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(7) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the employer and such employment had terminated on the date of the member's death.

**Source:** Laws 1945, c. 219, § 29, p. 648; R.S.Supp.,1947, § 79-2929; Laws 1949, c. 256, § 462, p. 850; Laws 1951, c. 293, § 3, p. 972; Laws 1969, c. 735, § 8, p. 2781; Laws 1975, LB 50, § 5; Laws 1976, LB 645, § 1; Laws 1981, LB 128, § 1; Laws 1986, LB 325, § 9; Laws 1987, LB 549, § 10; Laws 1988, LB 1170, § 5; Laws 1990, LB 903, § 1; Laws 1994, LB 833, § 32; R.S.1943, (1994), § 79-1528; Laws 1996, LB 900, § 591; Laws 1996, LB 1273, § 25; Laws 2000, LB 1192, § 16; Laws 2001, LB 711, § 4; Laws 2003, LB 451, § 20; Laws 2007, LB508, § 2; Laws 2012, LB916, § 23; Laws 2013, LB263, § 18.

#### Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

### **79-957 Termination of employment before retirement date; certified service record; statement of accumulated contributions; termination benefits, when.**

Upon termination of employment for any reason other than death, before qualifying for retirement under section 79-931, the retirement board shall, upon request, issue the member a certified service record and statement of accumulated contributions and retain such member's accumulated contributions. In such event, no further contributions shall be required, regular interest on accumulated contributions shall continue to be credited to his or her account, and none of the member's retirement rights shall be canceled. At age sixty-five or after thirty-five years of creditable service, such member shall become eligible to receive the retirement allowance provided in sections 79-933 and 79-934. Any deferred formula annuity provided shall be based on the member's compensation preceding the date of termination as if the member had retired on his or her date of termination. At the option of the terminating member, and if such member has completed at least five but less than thirty-five years of creditable service, such annuity may commence at any time after such member attains the age of sixty years and before his or her sixty-fifth birthday and shall be reduced by the percentages prescribed in section 79-934. Such election by

the terminating member may be made at any time prior to the commencement of the annuity payments.

**Source:** Laws 1945, c. 219, § 30, p. 648; R.S.Supp.,1947, § 79-2930; Laws 1949, c. 256, § 463, p. 850; Laws 1975, LB 56, § 2; Laws 1976, LB 33, § 1; Laws 1986, LB 325, § 10; Laws 1987, LB 549, § 11; Laws 1988, LB 160, § 3; Laws 1991, LB 549, § 38; R.S.1943, (1994), § 79-1529; Laws 1996, LB 900, § 592; Laws 1996, LB 1076, § 28; Laws 1997, LB 624, § 21.

**79-958 Employee; employer; required deposits and contributions.**

(1) Beginning on September 1, 2012, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund nine and seventy-eight hundredths percent of compensation. Such deposits shall be transmitted at the same time and in the same manner as required employer contributions.

(2) For the purpose of providing the funds to pay for formula annuities, every employer shall be required to deposit in the School Retirement Fund one hundred one percent of the required contributions of the school employees of each employer. Such deposits shall be transmitted to the retirement board at the same time and in the same manner as such required employee contributions.

(3) The employer shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the employer in lieu of member contributions. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer 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 School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

**Source:** Laws 1945, c. 219, § 32, p. 649; R.S.Supp.,1947, § 79-2932; Laws 1949, c. 256, § 465, p. 851; Laws 1951, c. 291, § 6, p. 968; Laws 1959, c. 414, § 2, p. 1388; Laws 1967, c. 546, § 9, p. 1806; Laws 1971, LB 987, § 24; Laws 1984, LB 457, § 3; Laws 1985, LB 353, § 3; Laws 1986, LB 325, § 11; Laws 1988, LB 160, § 4; Laws 1988, LB 1170, § 6; Laws 1991, LB 549, § 39; Laws 1994, LB 833, § 33; Laws 1995, LB 574, § 80; Laws 1996, LB 700, § 10; R.S.Supp.,1995, § 79-1531; Laws 1996, LB 900, § 593; Laws 1997, LB 623, § 27; Laws 1998, LB 1191, § 57; Laws 2001, LB

408, § 17; Laws 2002, LB 407, § 35; Laws 2005, LB 503, § 10; Laws 2007, LB596, § 2; Laws 2009, LB187, § 1; Laws 2011, LB382, § 1; Laws 2013, LB263, § 19; Laws 2013, LB553, § 8.

**79-959 Account of member; credit with regular interest.**

The account of each member in the School Retirement Fund shall be credited with regular interest earned monthly, quarterly, semiannually, or annually as the retirement board may direct.

**Source:** Laws 1945, c. 219, § 33, p. 649; R.S.Supp.,1947, § 79-2933; Laws 1949, c. 256, § 466, p. 851; Laws 1967, c. 546, § 10, p. 1807; Laws 1969, c. 735, § 10, p. 2781; Laws 1974, LB 905, § 7; Laws 1986, LB 311, § 19; Laws 1988, LB 1170, § 7; R.S.1943, (1994), § 79-1532; Laws 1996, LB 900, § 594.

**79-960 Employer; deduction; remittances; fees; interest charge.**

Every employer shall deduct and withhold an amount pursuant to section 79-958 from the compensation as a school employee of each member on each payroll period after such school employee becomes a member of the retirement system. The employer shall transmit periodically, as directed by the retirement board and in such form as is approved by the retirement board, such amounts and any other information required by the board. The board shall immediately transmit to the State Treasurer all payments received. The board may charge the employer a late administrative processing fee not to exceed twenty-five dollars if the information and money required by section 79-958 are delinquent or are not timely received by the board. In addition, the board may charge the employer a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. The late fee may be used to make a member's account whole for any costs that may have been incurred by the member due to the late receipt of contributions. The board shall charge the employer an amount equal to the interest which would have accrued if the delinquent report causes the employee to lose interest on his or her account. The proceeds of the interest charge shall be used to reimburse the account of each school employee deprived of interest by the delay.

**Source:** Laws 1945, c. 219, § 34, p. 649; R.S.Supp.,1947, § 79-2934; Laws 1949, c. 256, § 467, p. 851; Laws 1951, c. 291, § 7, p. 969; Laws 1967, c. 546, § 11, p. 1807; Laws 1984, LB 457, § 4; Laws 1986, LB 325, § 12; Laws 1988, LB 160, § 5; Laws 1988, LB 1170, § 8; Laws 1991, LB 549, § 40; Laws 1994, LB 1306, § 3; R.S.1943, (1994), § 79-1533; Laws 1996, LB 900, § 595; Laws 1996, LB 1076, § 29; Laws 1999, LB 272, § 92; Laws 2000, LB 1192, § 17; Laws 2002, LB 407, § 36.

**79-961 Repealed. Laws 2000, LB 1192, § 28.**

**79-962 Contract of employment; contents.**

Every contract of employment with a school employee shall specify (1) the contractual period of employment, including the starting and ending dates of

the contract, and (2) that it is subject to the provisions of the School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 36, p. 650; R.S.Supp.,1947, § 79-2936; Laws 1949, c. 256, § 469, p. 852; R.S.1943, (1994), § 79-1535; Laws 1996, LB 900, § 597; Laws 1997, LB 347, § 27; Laws 2013, LB263, § 20.

**79-963 Director; employer and employee; furnish information.**

Every employer and school employee shall send to the director of the Nebraska Public Employees Retirement Systems, as specified in section 79-906, upon request and in the manner required by the director, such information as he or she may require (1) for the identification of school employees and (2) for the determination of the membership of the retirement system and the obligations of the employer and school employee to the retirement system.

**Source:** Laws 1945, c. 219, § 37, p. 650; R.S.Supp.,1947, § 79-2937; Laws 1949, c. 256, § 470, p. 852; Laws 1951, c. 293, § 4, p. 972; Laws 1969, c. 735, § 11, p. 2782; Laws 1988, LB 1170, § 9; Laws 1991, LB 549, § 41; R.S.1943, (1994), § 79-1536; Laws 1996, LB 900, § 598; Laws 2000, LB 1192, § 18; Laws 2002, LB 407, § 37.

**79-964 Employer; pay to board; withholding of excess deduction.**

Every employer shall pay to the retirement board the required deposits made by every member in the service of such employer. No employer shall, without the consent of the member, withhold or deduct from any member's compensation on any payroll any amount in excess of the required deduction for the period covered by such payroll.

**Source:** Laws 1956, c. 219, § 38, p. 650; R.S.Supp.,1947, § 79-2938; Laws 1949, c. 256, § 471, p. 852; Laws 1976, LB 30, § 4; R.S.1943, (1994), § 79-1537; Laws 1996, LB 900, § 599.

**79-965 Payment of compensation less required deductions; discharge of claims for service.**

Notwithstanding any other law, rule, or regulation affecting the salary, pay, compensation, or tenure of any member, payment of such salary, pay, or compensation to such member, less the required deductions provided for in the School Employees Retirement Act, shall be a full and complete discharge and acquittance of all claims for service rendered by such member during the period covered by such payment.

**Source:** Laws 1945, c. 219, § 39, p. 651; R.S.Supp.,1947, § 79-2939; Laws 1949, c. 256, § 472, p. 853; R.S.1943, (1994), § 79-1538; Laws 1996, LB 900, § 600.

**79-966 School Retirement Fund; state deposits; amount; determination.**

(1) 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 shall annually, on or before July 1, determine the state deposit to be made by the state in the School Retirement Fund for that fiscal year. The amount of such state deposit shall be determined pursuant to section 79-966.01.

The retirement board shall thereupon certify the amount of such state deposit, and on the warrant of the Director of Administrative Services, the State Treasurer shall, as of July 1 of such year, transfer from funds appropriated by the state for that purpose to the School Retirement Fund the amount of such state deposit.

(2) For each fiscal year beginning July 1, 2009, until July 1, 2014, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to one percent of the compensation of all members of the retirement system. For each fiscal year beginning July 1, 2014, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to two percent of the compensation of all members of the retirement system.

(3) In addition to the state deposits required by subsections (1) and (2) of this section, beginning on July 1, 2005, and each fiscal year thereafter, the state shall deposit in the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity benefit established pursuant to sections 79-933 and 79-952 as accrued through the end of the previous fiscal year of the school employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 41, p. 651; R.S.Supp.,1947, § 79-2941; Laws 1949, c. 256, § 474, p. 853; Laws 1965, c. 530, § 4, p. 1668; Laws 1969, c. 735, § 12, p. 2782; Laws 1971, LB 987, § 25; Laws 1981, LB 248, § 3; Laws 1984, LB 457, § 5; Laws 1988, LB 1170, § 10; R.S.1943, (1994), § 79-1540; Laws 1996, LB 900, § 601; Laws 2002, LB 407, § 39; Laws 2004, LB 1097, § 29; Laws 2009, LB187, § 2; Laws 2011, LB382, § 2; Laws 2013, LB553, § 9.

#### Cross References

Class V School Employees Retirement Act, see section 79-978.01.

### **79-966.01 School Retirement Fund; annual actuarial valuations.**

Beginning July 1, 2013, and each year thereafter, this section shall govern annual actuarial valuations of the School Retirement Fund. In order to determine the additional required deposits by the State of Nebraska, as required by section 79-966, the board shall cause an annual actuarial valuation to be performed that will value the plan assets for the year and ascertain the contributions required for such fiscal year. The actuary for the board shall perform the annual valuation 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 percentage of salary 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 School Employees Retirement Act, the actuary shall determine the added contributions required to be paid by the State of Nebraska that constitute the difference between the actuarially required contribution rate and the rate of all other required contributions.

**Source:** Laws 2002, LB 407, § 38; Laws 2006, LB 1019, § 9; Laws 2013, LB553, § 10.

**79-967 Board; determine rates of benefits; adjustments; distribution of gains and savings.**

As often as may be necessary, the retirement board shall cause to be made a thorough investigation of the several funds or account of the retirement system for the purpose of determining the rates at which the benefits will be granted. It shall make adjustments in such rates as, upon recommendation of the actuary, may appear to be proper for maintaining solvency of the several funds or account. No revision of rates shall affect adversely the rights of any beneficiary under an application made prior to such revision. The retirement board shall, from time to time, order and make such distribution of gains and savings to the several funds or account as it may deem equitable.

**Source:** Laws 1945, c. 219, § 43, p. 652; R.S.Supp.,1947, § 79-2943; Laws 1949, c. 256, § 476, p. 854; Laws 1969, c. 736, § 2, p. 2787; Laws 1988, LB 1170, § 11; R.S.1943, (1994), § 79-1542; Laws 1996, LB 900, § 602; Laws 1998, LB 1191, § 58; Laws 2002, LB 407, § 40.

**79-968 Retirement system; assets; funds; account; investment.**

All assets of the retirement system shall be credited, according to the purpose for which they are held, to the Expense Fund, to the School Retirement Fund, or to the Contingent Account. Any money in the account or funds 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 1945, c. 219, § 46, p. 653; R.S.Supp.,1947, § 79-2946; Laws 1949, c. 256, § 479, p. 855; Laws 1965, c. 530, § 5, p. 1668; Laws 1967, c. 546, § 12, p. 1808; Laws 1969, c. 584, § 88, p. 2401; Laws 1988, LB 1170, § 12; Laws 1993, LB 292, § 4; Laws 1994, LB 1066, § 90; R.S.1943, (1994), § 79-1545; Laws 1996, LB 900, § 603; Laws 2002, LB 407, § 41.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-969 Repealed. Laws 2002, LB 407, § 67.**

**79-970 Repealed. Laws 2002, LB 407, § 67.**

**79-971 Accumulated contributions; use.**

The Nebraska Public Employees Retirement Systems shall keep an accounting of the required deposits from the compensation of members collected to provide savings annuities. The accumulated contributions, plus statutorily required accumulated interest, of a member may be returned to him or her upon his or her termination, paid to his or her estate or designated beneficiary in the event of his or her death as provided in section 79-956, or used in the event of his or her retirement to assist in funding his or her school retirement allowance, disability retirement allowance, or formula annuity allowance. Any accumulated contributions forfeited shall be transferred from the School Retirement Fund to the Contingent Account.

**Source:** Laws 1945, c. 219, § 47, p. 653; R.S.Supp.,1947, § 79-2947; Laws 1949, c. 256, § 480, p. 855; Laws 1969, c. 735, § 14, p. 2783; Laws 1971, LB 987, § 26; Laws 1987, LB 549, § 12; Laws 1988, LB 1170, § 15; R.S.1943, (1994), § 79-1546; Laws 1996, LB 900, § 606; Laws 2002, LB 407, § 43.

**79-972 Repealed. Laws 2002, LB 407, § 67.**

**79-972.01 School Retirement Fund; created; use.**

The School Retirement Fund is created. The required deposits of the employer, the state, and the employees shall be credited to the fund and all savings annuities, service annuities, and formula annuities shall be paid from the fund as provided in the School Employees Retirement Act. Any unexpended balance existing on June 30, 2002, in the School Employers Deposit Account, the Service Annuity Account, the School Employees Savings Account, the Annuity Reserve Account, and the School Employees Retirement System Reserve Fund shall be transferred to the School Retirement Fund.

**Source:** Laws 2002, LB 407, § 42.

**79-973 Contingent Account; created; use.**

A Contingent Account is created (1) to facilitate the crediting of regular interest on the amounts in the School Retirement Fund, (2) to fund the adjusted supplemental retirement benefit provided by section 79-947, and (3) to provide an account to cover any special requirements of the School Retirement Fund or the Expense Fund. All income, interest, and dividends derived from the deposits and investments authorized by the School Employees Retirement Act shall be paid into the Contingent Account. The retirement board may accept gifts, devises, and bequests. Any funds which may come into the possession of the retirement system in this manner or which may be transferred from the School Retirement Fund by reason of the lack of a claimant or because of a surplus in any fund or account described in section 79-968, or any other money the disposition of which is not otherwise provided for in the act, shall be credited to the Contingent Account. Any deficit occurring in the School Retirement Fund or in the Expense Fund shall be met by payments to the fund from the Contingent Account. Annually the retirement board shall estimate the amount of money deemed necessary to pay the obligation levied against the Contingent Account, including regular interest. If such amount exceeds the revenue estimated to accrue to the fund for that year, such excess shall be certified to the State Treasurer and shall, on warrant of the Director of Administrative Ser-

VICES, be transferred from funds appropriated by the state for such purpose to the Contingent Account.

**Source:** Laws 1945, c. 219, § 50, p. 654; R.S.Supp.,1947, § 79-2950; Laws 1949, c. 256, § 483, p. 856; Laws 1965, c. 530, § 8, p. 1669; Laws 1971, LB 987, § 28; Laws 1988, LB 1170, § 17; Laws 1991, LB 549, § 43; Laws 1993, LB 292, § 5; R.S.1943, (1994), § 79-1549; Laws 1996, LB 900, § 608; Laws 2002, LB 407, § 44.

**79-974 Expense Fund; created; use.**

The Expense Fund is created and is the fund to which shall be credited the proportionate share of administration expense transferred from the Contingent Account at the direction of the retirement board. The Expense 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 School Employees Retirement Act and necessary in connection with the administration and operation of the retirement system. Annually, as soon after July 1 as is practicable, the retirement board shall estimate the amount of money which is deemed necessary to be paid into the Expense Fund for that fiscal year.

**Source:** Laws 1945, c. 219, § 51, p. 655; R.S.Supp.,1947, § 79-2951; Laws 1949, c. 256, § 484, p. 857; Laws 1971, LB 987, § 29; Laws 1988, LB 1170, § 18; R.S.1943, (1994), § 79-1550; Laws 1996, LB 900, § 609; Laws 2001, LB 408, § 18; Laws 2005, LB 364, § 10.

**79-975 Repealed. Laws 2002, LB 407, § 67.**

**79-976 Investment services; charges; report; state investment officer; duty.**

Any funds of the 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 retirement 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 retirement board, and the Nebraska Retirement Systems Committee of the Legislature. The report submitted to the committee shall be submitted electronically. All money received by the State Treasurer and the retirement board for the retirement system shall be invested by the state investment officer within thirty-one days after receipt.

**Source:** Laws 1967, c. 546, § 17, p. 1809; Laws 1969, c. 584, § 89, p. 2401; Laws 1986, LB 311, § 21; Laws 1988, LB 1170, § 20; Laws 1991, LB 549, § 46; Laws 1994, LB 1066, § 91; R.S.1943, (1994), § 79-1556; Laws 1996, LB 900, § 611; Laws 2002, LB 407, § 45; Laws 2012, LB782, § 156.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-977 School district expenditures; not exempt from limitations on spending.**

Any expenditure made by a school district pursuant to sections 79-934, 79-968, and 79-973 as changed by Laws 1993, LB 292, shall be considered a general fund expenditure of the district and shall not be exempt from the growth limitations placed on district spending by the Tax Equity and Educational Opportunities Support Act.

**Source:** Laws 1993, LB 292, § 6; R.S.1943, (1994), § 79-1567; Laws 1996, LB 900, § 612; Laws 2002, LB 407, § 46.

**Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-977.01 Limitation of actions.**

Every claim and demand under the School 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, § 31.

**79-977.02 Retirement system contributions, income, 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 School Employees Retirement Act.

**Source:** Laws 1998, LB 1191, § 59.

**79-977.03 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, § 60.

**(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS**

**79-978 Terms, defined.**

For purposes of the Class V School Employees Retirement Act, unless the context otherwise requires:

(1) Retirement system or system means the School Employees' Retirement System of (corporate name of the school district as described in section 79-405) as provided for by the act;

(2) Board means the board of education of the school district;

(3) Trustee means a trustee provided for in section 79-980;

(4) Employee means the following enumerated persons receiving compensation from the school district: (a) Regular teachers and administrators employed on a written contract basis; and (b) regular employees, not included in subdivi-

sion (4)(a) of this section, hired upon a full-time basis, which basis shall contemplate a workweek of not less than thirty hours;

(5) Member means any employee included in the membership of the retirement system or any former employee who has made contributions to the system and has not received a refund;

(6) Annuitant means any member receiving an allowance;

(7) Beneficiary means any person entitled to receive or receiving a benefit by reason of the death of a member;

(8) Membership service means service on or after September 1, 1951, as an employee of the school district and a member of the system for which compensation is paid by the school district. Credit for more than one year of membership service shall not be allowed for service rendered in any fiscal year. Beginning September 1, 2005, a member shall be credited with a year of membership service for each fiscal year in which the member performs one thousand or more hours of compensated service as an employee of the school district. An hour of compensated service shall include any hour for which the member is compensated by the school district during periods where no service is performed due to vacation or approved leave. If a member performs less than one thousand hours of compensated service during a fiscal year, one-tenth of a year of membership service shall be credited for each one hundred hours of compensated service by the member in such fiscal year. In determining a member's total membership service, all periods of membership service, including fractional years of membership service in one-tenth-year increments, shall be aggregated;

(9) Prior service means service rendered prior to September 1, 1951, for which credit is allowed under section 79-999, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-990, 79-991, 79-994, 79-995, and 79-997;

(10) Creditable service means the sum of the membership service and the prior service, measured in one-tenth-year increments;

(11) Compensation means salary or wages payable by the school district before reduction for contributions picked up under section 414(h) of the Internal Revenue Code, elective contributions made pursuant to section 125 or 403(b) of the code, or amounts not currently includible in income by reason of section 132(f)(4) of the code, subject to the applicable limitations of section 401(a)(17) of the code;

(12) Military service means service in the uniformed services as defined in 38 U.S.C. 4301 et seq., as such provision existed on March 27, 1997;

(13) Accumulated contributions means the sum of amounts contributed by a member of the system together with regular interest credited thereon;

(14) Regular interest means interest (a) on the total contributions of the member prior to the close of the last preceding fiscal year, (b) compounded annually, and (c) at rates to be determined annually by the board, which shall have the sole, absolute, and final discretionary authority to make such determination, except that the rate for any given year in no event shall exceed the actual percentage of net earnings of the system during the last preceding fiscal year;

(15) Retirement date means the date of retirement of a member for service or disability as fixed by the board;

(16) Normal retirement date means the end of the month during which the member attains age sixty-five and has completed at least five years of membership service;

(17) Early retirement date means that month and year selected by a member having at least ten years of creditable service which includes a minimum of five years of membership service and who has attained age fifty-five;

(18) Retirement allowance means the total annual retirement benefit payable to a member for service or disability;

(19) Annuity means annual payments, for both prior service and membership service, for life as provided in the Class V School Employees Retirement Act;

(20) Actuarial tables means:

(a) For determining the actuarial equivalent of any annuities other than joint and survivorship annuities, a unisex mortality table using twenty-five percent of the male mortality and seventy-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually; and

(b) For joint and survivorship annuities, a unisex retiree mortality table using sixty-five percent of the male mortality and thirty-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually and a unisex joint annuitant mortality table using thirty-five percent of the male mortality and sixty-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually;

(21) Actuarial equivalent means the equality in value of the retirement allowance for early retirement or the retirement allowance for an optional form of annuity, or both, with the normal form of the annuity to be paid, as determined by the application of the appropriate actuarial table, except that use of such actuarial tables shall not effect a reduction in benefits accrued prior to September 1, 1985, as determined by the actuarial tables in use prior to such date;

(22) Fiscal year means the period beginning September 1 in any year and ending on August 31 of the next succeeding year;

(23) Primary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of a member; and

(24) Secondary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of all primary beneficiaries prior to the death of the member. If no primary beneficiary survives the member, secondary beneficiaries shall be treated in the same manner as primary beneficiaries.

**Source:** Laws 1951, c. 274, § 1, p. 910; Laws 1953, c. 308, § 1, p. 1025; Laws 1967, c. 544, § 1, p. 1786; Laws 1976, LB 994, § 1; Laws 1982, LB 131, § 1; Laws 1985, LB 215, § 1; Laws 1987, LB 298, § 5; Laws 1988, LB 1142, § 9; Laws 1988, LB 551, § 2; Laws 1989, LB 237, § 1; Laws 1991, LB 350, § 1; Laws 1992, LB 1001, § 20; Laws 1993, LB 107, § 1; Laws 1995, LB 505, § 1; R.S.Supp.,1995, § 79-1032; Laws 1996, LB 900, § 613; Laws

1997, LB 347, § 28; Laws 1997, LB 623, § 28; Laws 1998, LB 497, § 6; Laws 2000, LB 155, § 1; Laws 2005, LB 364, § 11; Laws 2010, LB950, § 17.

**Cross References**

For supplemental retirement benefits, see sections 79-940 to 79-947.

**79-978.01 Act, how cited.**

Sections 79-978 to 79-9,118 shall be known and may be cited as the Class V School Employees Retirement Act.

**Source:** Laws 1998, LB 497, § 7; Laws 2011, LB509, § 33.

**79-979 Class V school district; employees' retirement system; established.**

(1) Prior to September 13, 1997, in each Class V school district in the State of Nebraska there is hereby established a separate retirement system for all regular employees of such school district. Such system shall be for the purpose of providing retirement benefits for all regular employees of the school district as provided in the Class V School Employees Retirement Act. The system shall be known as School Employees' Retirement System of (corporate name of the school district as described in section 79-405). All of its business shall be transacted, all of its funds shall be invested, and all of its cash and securities and other property shall be held in trust by such name for the purposes set forth in the act. Such funds shall be kept separate from all other funds of the school district and shall be used for no other purpose.

(2) Except as provided in subsection (3) of this section, if any new Class V school districts are formed after September 13, 1997, such new Class V school district shall elect to become or remain a part of the retirement system established pursuant to the School Employees Retirement Act.

(3) Any new Class V school districts formed pursuant to the Learning Community Reorganization Act shall continue to participate in the retirement system established pursuant to the Class V School Employees Retirement Act if such new Class V school district was formed at least in part by territory that had been in a Class V school district that participated in the retirement system established pursuant to the Class V School Employees Retirement Act.

**Source:** Laws 1951, c. 274, § 2, p. 912; Laws 1988, LB 1142, § 10; R.S.1943, (1994), § 79-1033; Laws 1996, LB 900, § 614; Laws 1997, LB 623, § 29; Laws 1997, LB 624, § 22; Laws 1998, LB 497, § 8; Laws 2006, LB 1024, § 60.

**Cross References**

Learning Community Reorganization Act, see section 79-4,117.

School Employees Retirement Act, see section 79-901.

**79-980 Employees retirement system; administration; trustees; Class V Retirement System Board; liability.**

(1) At any time that the retirement system consists of only one Class V school district, the general administration of the retirement system is hereby vested in the board of education. The board shall appoint, by a majority of all its members, ten trustees to serve as executive officers to administer the Class V School Employees Retirement Act. Such trustees shall consist of (a) the superintendent of schools, as ex officio trustee, (b) four members of the retirement

system, two from the certificated staff, one from the classified staff, and one from the annuitants, (c) three members of the board of education, and (d) two trustees who are business persons qualified in financial affairs and who are not members of the retirement system. The trustees shall serve without compensation, but they shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177. A trustee shall serve until a successor qualifies, except that trustees who are members of the retirement system or members of the board of education shall be disqualified as trustees immediately upon ceasing to be a member of the retirement system or of the board of education. Each trustee shall be entitled to one vote on the board of trustees, and six trustees shall constitute a quorum for the transaction of any business. The trustees who are appointed from the board of education and the membership shall be appointed for each fiscal year. The two trustees who are not members of the board of education or of the retirement system shall be appointed for three fiscal years each. The trustees and the administrator of the retirement system shall administer the retirement system in compliance with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; and section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service. No member of the board of education or trustee shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to his or her retirement system duties.

(2) At any time that the retirement system consists of more than one Class V school district, the general administration of the retirement system is hereby vested in a Class V Retirement System Board composed of three members of the school board for each participating Class V school district. The board shall appoint, by a majority of all its members, trustees to serve as executive officers to administer the Class V School Employees Retirement Act. Such trustees shall consist of (a) the superintendent of each participating Class V school district, as ex officio trustees, (b) four members of the retirement system, two from the certificated staff, one from the classified staff, and one from the annuitants, (c) three members of the board, and (d) two trustees who are business persons qualified in financial affairs and who are not members of the retirement system. The trustees who are appointed from the board and the membership shall, to the extent feasible, be appointed equally from each participating Class V school district. The trustees shall serve without compensation, but they shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177. A trustee shall serve until a successor qualifies, except that trustees who are members of the retirement system or members of the board shall be disqualified as trustees immediately upon ceasing to be a member of the retirement system or of the board. Each trustee shall be entitled to one vote on

the board of trustees, and six trustees shall constitute a quorum for the transaction of any business. The trustees who are appointed from the board and the membership shall be appointed for each fiscal year. The two trustees who are not members of the board or of the retirement system shall be appointed for three fiscal years each. The trustees and the administrator of the retirement system shall administer the retirement system in compliance with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; and section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service. No member of the Class V Retirement System Board or trustee shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to his or her retirement system duties.

**Source:** Laws 1951, c. 274, § 3, p. 913; Laws 1963, c. 490, § 1, p. 1564; Laws 1979, LB 135, § 1; Laws 1981, LB 204, § 157; Laws 1993, LB 107, § 2; Laws 1995, LB 505, § 2; R.S.Supp., 1995, § 79-1034; Laws 1996, LB 900, § 615; Laws 1998, LB 497, § 9; Laws 2001, LB 711, § 5; Laws 2006, LB 1024, § 61; Laws 2012, LB916, § 24; Laws 2014, LB1042, § 8.  
Effective date April 17, 2014.

**79-981 Employees retirement system; board of education or Class V Retirement System Board; rules and regulations; administrator; employees compensation.**

The board of education or Class V Retirement System Board shall from time to time establish rules and regulations for the administration of the retirement system and for the transaction of its business and shall appoint an administrator of the retirement system. The board may contract for such medical and other services as shall be required to transact the business of the retirement system. Compensation for all persons employed by the board and all other expenses of the board necessary for the proper and efficient operation of the retirement system shall be paid in such amounts as the board determines and approves.

In addition to such duties and other duties arising out of the Class V School Employees Retirement Act not specifically reserved or assigned to others, the board shall maintain a separate account of each member's contribution, the record of which shall be available to the member upon request, compile such data as may be necessary for the required actuarial valuation, consider and pass on all applications for annuities or other benefits and have examinations made when advisable of persons receiving disability benefits, and direct and determine all policies necessary in the administration of the act.

**Source:** Laws 1951, c. 274, § 4, p. 913; Laws 1985, LB 215, § 2; Laws 1991, LB 350, § 2; R.S.1943, (1994), § 79-1035; Laws 1996, LB 900, § 616; Laws 1998, LB 497, § 10; Laws 2001, LB 711, § 6; Laws 2006, LB 1024, § 62.

**79-982 Employees retirement system; trustees; meetings; duties.**

The trustees shall (1) hold regular meetings annually and such special meetings at such times as may be deemed necessary, and all meetings of the trustees shall be open to the public, (2) keep a record of all the proceedings of such meetings, (3) subject to the approval of the board of education, invest all cash income not required for current payments in securities of the type provided in section 79-9,107 and so reinvest the proceeds from the sale or redemption of investments, and (4) supervise the financial affairs of the retirement system and recommend to the board of education any changes in the administration of the retirement system essential to the actuarial requirements of the fund.

**Source:** Laws 1951, c. 274, § 5, p. 914; Laws 1955, c. 321, § 1, p. 992; Laws 1979, LB 187, § 242; Laws 1993, LB 107, § 3; R.S.1943, (1994), § 79-1036; Laws 1996, LB 900, § 617; Laws 2001, LB 711, § 7.

**79-983 Employees retirement system; administrator; executive officer.**

The administrator of the retirement system shall keep the minutes and records of the retirement system, shall be the executive officer in charge of the administration of the detailed affairs of the retirement system, and shall perform such other duties as may be assigned by the board of education, the Class V Retirement System Board, or the trustees.

**Source:** Laws 1951, c. 274, § 6, p. 915; Laws 1991, LB 350, § 3; R.S.1943, (1994), § 79-1037; Laws 1996, LB 900, § 618; Laws 2006, LB 1024, § 63.

**79-984 Employees retirement system; actuary; employment; duties.**

The board of education or Class V Retirement System Board shall contract for the services of an actuary who shall be the technical advisor of the board and the trustees on matters regarding the operation of the retirement system. The actuary shall (1) make a general investigation of the operation of the retirement system annually, which investigation shall cover mortality, retirement, disability, employment, turnover, interest, and earnable compensation, and (2) recommend tables to be used for all required actuarial calculations. The actuary shall perform such other duties as may be assigned by the board.

**Source:** Laws 1951, c. 274, § 7, p. 915; R.S.1943, (1994), § 79-1038; Laws 1996, LB 900, § 619; Laws 1998, LB 497, § 11; Laws 2001, LB 711, § 8; Laws 2006, LB 1024, § 64; Laws 2013, LB263, § 21.

**79-985 Employees retirement system; attorney.**

The attorney for the board of education or Class V Retirement System Board shall be the legal advisor to the trustees.

**Source:** Laws 1951, c. 274, § 8, p. 915; R.S.1943, (1994), § 79-1039; Laws 1996, LB 900, § 620; Laws 2006, LB 1024, § 65.

**79-986 Employees retirement system; school district as treasurer; duties.**

The school district, if there is only one Class V school district in the retirement system, or the Class V school district designated by the Class V Retirement System Board, if there is more than one Class V school district in

the retirement system, shall act as the treasurer of the system and the official custodian of the cash and securities belonging to the retirement system, shall provide adequate safe deposit facilities for the preservation of such securities, and shall hold such cash and securities subject to the order of the board of education or Class V Retirement System Board.

The school district or designated school district shall receive all items of taxes or cash belonging to the retirement system and shall deposit in banks approved by the board of education or Class V Retirement System Board all such amounts in trust or custodial accounts. Notwithstanding any limitations elsewhere imposed by statute on the location of the retirement system's depository bank, such limitations shall not apply to the use of depository banks for the custody of the system's cash, securities, and other investments. The school district or designated school district, as treasurer of the system, shall make payments for purposes specified in the Class V School Employees Retirement Act. All banks and custodians which receive and hold securities and investments for the retirement system may hold and evidence such securities by book entry account rather than obtaining and retaining the original certificate, indenture, or governing instrument for such security.

**Source:** Laws 1951, c. 274, § 9, p. 915; Laws 1988, LB 1142, § 11; Laws 1995, LB 505, § 3; Laws 1996, LB 604, § 11; R.S.Supp.,1995, § 79-1040; Laws 1996, LB 900, § 621; Laws 1997, LB 623, § 30; Laws 1998, LB 497, § 12; Laws 2006, LB 1024, § 66.

#### **79-987 Employees retirement system; audit; cost; report.**

(1) An annual audit of the affairs of the retirement system shall be conducted. At the option of the board, such audit may be conducted by a certified public accountant or the Auditor of Public Accounts. The costs of such audit shall be paid from funds of the retirement system. A copy of such audit shall be filed with the Auditor of Public Accounts.

(2) Beginning March 1, 2015, and each March 1 thereafter, if such retirement plan is a defined benefit plan, the board of education shall cause to be prepared an annual report and the administrator shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report submitted to the committee shall be submitted electronically. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to section 79-979. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members of the American Academy of Actuaries and meet the academy's qualification standards to render a statement of actuarial opinion, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report shall be presented to the Nebraska Retirement Systems Committee of the Legislature at a public hearing.

**Source:** Laws 1951, c. 274, § 19, p. 921; Laws 1973, LB 215, § 1; R.S.1943, (1994), § 79-1050; Laws 1996, LB 900, § 622; Laws 1998, LB 1191, § 61; Laws 1999, LB 795, § 13; Laws 2001, LB 711, § 9; Laws 2006, LB 1019, § 10; Laws 2011, LB509, § 34;

Laws 2012, LB782, § 157; Laws 2013, LB263, § 22; Laws 2014, LB1042, § 9.

Effective date April 17, 2014.

**79-988 Employees retirement system; membership; separate employment; effect.**

(1) Any person who becomes an employee on or after the date of establishment of the retirement system shall become a member of the retirement system upon employment. Contributions by such employee under the Class V School Employees Retirement Act shall begin with the first payroll period after becoming a member, and creditable service shall then begin to accrue.

(2) Any employee who qualifies for membership in the retirement system pursuant to subsection (1) of 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 retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

**Source:** Laws 1951, c. 274, § 10, p. 916; Laws 1953, c. 308, § 2, p. 1028; Laws 1979, LB 391, § 3; Laws 1982, LB 131, § 2; Laws 1987, LB 298, § 6; R.S.1943, (1994), § 79-1041; Laws 1996, LB 900, § 623; Laws 1997, LB 624, § 23; Laws 1998, LB 497, § 13.

**79-988.01 Transfer of funds by the state.**

Through the 2013-14 fiscal year, in addition to the transfers pursuant to section 79-916, the state shall transfer to the funds of each retirement system provided for in the Class V School Employees Retirement Act an amount equal to 14.11604 percent of six million eight hundred ninety-five thousand dollars.

**Source:** Laws 1996, LB 700, § 4; Laws 1998, LB 497, § 14; Laws 2011, LB382, § 3.

**79-989 Employees retirement system; board of education; records available.**

The board shall have available records showing the name, title, compensation, sex, date of birth, and length of service of each employee entitled to membership in the retirement system and such other information regarding such member as may be necessary for actuarial study and valuation.

**Source:** Laws 1951, c. 274, § 11, p. 917; R.S.1943, (1994), § 79-1042; Laws 1996, LB 900, § 624.

**79-990 Employees retirement system; time served in armed forces or on leave of absence; resignation for maternity purposes; effect.**

(1) Any member who is eligible for reemployment on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., as adopted under section 55-161, or who is eligible for reemployment under section 55-160 may pay to the retirement system after the date of his or her return from active military service, and within the period required by law, not to exceed five years, an amount equal to the sum of all deductions which would have been made from the salary which he or she would have received during the period of military service for which

creditable service is desired. If such payment is made, the member shall be entitled to credit for membership service in determining his or her annuity for the period for which contributions have been made and the board shall be responsible for any funding necessary to provide for the benefit which is attributable to this increase in the member's creditable service. The member's payments shall be paid as the trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary.

(2) Under such rules and regulations as the board may prescribe, any member who was away from his or her position while on a leave of absence from such position authorized by the board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for any or all time he or she was on leave of absence. Such time shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on salary at the level received immediately prior to the leave of absence. Such credit shall be received if such member pays into the retirement system (a) an amount equal to the sum of the deductions from his or her salary for the portion of the leave for which creditable service is desired, (b) any contribution which the school district would have been required to make for the portion of the leave for which creditable service is desired had he or she continued to receive salary at the level received immediately prior to the leave of absence, and (c) interest on these combined payments from the date such deductions would have been made to the date of repayment determined by using the rate of interest established by the board for interest on such purchases of service credit. Such amounts shall be paid as the trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of the termination of his or her leave of absence. Interest on any delayed payment shall be at the rate of interest established by the board for determining interest on delayed payments by members to the retirement system. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary, and if payments are made on an installment basis, creditable service will be credited only as payment has been made to the retirement system to purchase each additional one-tenth-year increment. Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence, the member must have returned to employment with the school district within one year after termination of the leave of absence.

(3) Until one year after May 2, 2001, any member currently employed by the school district who resigned from full-time employment with the school district for maternity purposes prior to September 1, 1979, and was reemployed as a full-time employee by the school district before the end of the school year

following the school year of such member's resignation may have such absence treated as though the absence was a leave of absence described in subsection (2) of this section. The period of such absence for maternity purposes shall be included in creditable service when determining the member's eligibility for death, disability, termination, and retirement benefits if the member submits satisfactory proof to the board that the prior resignation was for maternity purposes and the member complies with the payment provisions of subsection (2) of this section before the one-year anniversary of May 2, 2001.

**Source:** Laws 1951, c. 274, § 12, p. 917; Laws 1981, LB 369, § 1; Laws 1982, LB 131, § 3; Laws 1988, LB 551, § 3; Laws 1991, LB 350, § 4; Laws 1992, LB 1001, § 21; Laws 1993, LB 107, § 4; Laws 1995, LB 505, § 4; Laws 1996, LB 847, § 26; R.S.Supp.,1995, § 79-1043; Laws 1996, LB 900, § 625; Laws 1996, LB 1076, § 12; Laws 2001, LB 711, § 10; Laws 2002, LB 722, § 7; Laws 2005, LB 364, § 12; Laws 2010, LB950, § 18; Laws 2013, LB263, § 23.

**79-991 Employees retirement system; member; prior service credit; how obtained.**

(1) An employee who becomes a member without prior service credit may purchase prior service credit, not to exceed the lesser of ten years or the member's years of membership service, for the period of service the member was employed by a school district or by an educational service unit and which is not used in the calculation of any retirement or disability benefit having been paid, being paid, or payable in the future to such member under any defined benefit retirement system or program maintained by such other school district or educational service unit. The purchase of prior service credit shall be made in accordance with and subject to the following requirements:

(a) A member who desires to purchase prior service credit shall make written application to the administrator of the retirement system that includes all information and documentation determined by the administrator as necessary to verify the member's prior service and qualification to purchase the prior service credit. Such application shall include the member's written authorization for the administrator to request and receive from any of the member's former employers verification of the member's prior service, salary, and other information for determining the member's eligibility to purchase prior service credit. Before prior service credit may be purchased, the administrator shall have received verification of the member's salary in each year with the other school district or educational service unit and confirmation that the prior service to be purchased by the member is not also credited in the calculation of a retirement or disability benefit for such member under another defined benefit retirement system or program. The member's application to purchase prior service credit may be made at any time before the fifth anniversary of the member's membership in the retirement system or, if earlier, the member's termination of employment with the school district;

(b) The member shall pay to the retirement system the total amount he or she would have contributed to the retirement system had he or she been a member of the retirement system during the period for which prior service is being purchased, together with interest thereon as determined using the rate of interest established by the board for interest on such purchases of prior service

credit. Such payment shall be based on the most recent years' salary the member earned in another school district or educational service unit if the salary is verified by the other school district or educational service unit or, if not, the payment shall be based on the member's annual salary at the time he or she became a member;

(c) Payments by the member for the purchase of the prior service credit shall be paid as the trustees may direct through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of membership. Interest on delayed payments shall be at the rate of interest established by the board for determining interest on delayed payments by members to the retirement system. In the event the member terminates employment with the school district for any reason before full payment for the prior service has been made, the remaining installments shall be immediately due and payable to the retirement system. Prior service credit may be purchased only in one-tenth-year increments, and if payments are made on an installment basis, the prior service will be credited only as payment has been made to the retirement system. If the prior service to be purchased by the member exceeds the member's membership service at the time of application or any subsequent date, such excess prior service shall be credited to the member only as the member completes and is credited additional membership service, in one-tenth-year increments, notwithstanding the member's payment for such prior service credit. If the member retires or terminates employment before completing sufficient membership service to permit all of the excess prior service that has been purchased by the member to be credited to such member, the retirement system shall refund to the member, or to the member's beneficiary if the member's termination is due to his or her death, the payments that have been made to the retirement system for such uncredited prior service, together with regular interest on such refund; and

(d) The school district shall contribute to the retirement system an amount equal to the amount paid by each member for the purchase of prior service credit at the time such payments are made by such member.

(2) Any employee who became a member before July 1, 2014, and who has five or more years of creditable service and any employee who became a member for the first time on or after July 1, 2014, and who has ten or more years of creditable service, excluding in either case years of prior service acquired pursuant to section 79-990, 79-994, 79-995, or 79-997, or subsection (1) of this section, may elect to purchase up to a total of five years of additional creditable service under the retirement system, and upon such purchase the member shall be given the same status as though he or she had been a member of the retirement system for such additional number of years, except as otherwise specifically provided in the Class V School Employees Retirement Act. Creditable service may be purchased only in one-tenth-year increments. The amount to be paid to the retirement system for such creditable service shall be equal to the actuarial cost to the retirement system of the increased benefits attributable to such additional creditable service as determined by the retirement system's actuary at the time of the purchase pursuant to actuarial assumptions and methods adopted by the trustees for this purpose. The election to purchase additional creditable service may be made at any time before the member's termination of employment, and all payments for the purchase of

such creditable service must be completed within five years after the election or before the member's termination or retirement, whichever event occurs first. Payment shall be made as the trustees may direct through a single payment to the retirement system, on an installment basis, including payments pursuant to a binding irrevocable payroll deduction authorization between the member and the school district, or by such other method approved by the trustees and permitted by law. If payments are made on an installment basis, creditable service will be credited only as payment has been made to the retirement system to purchase each additional one-tenth-year increment. Interest shall be charged on installment payments at the rate of interest established by the board for determining interest on delayed payments by members to the retirement system.

**Source:** Laws 1951, c. 274, § 14, p. 918; Laws 1953, c. 308, § 3, p. 1029; Laws 1982, LB 131, § 5; Laws 1987, LB 298, § 8; Laws 1988, LB 551, § 4; Laws 1992, LB 1001, § 23; Laws 1993, LB 107, § 5; Laws 1995, LB 505, § 6; R.S.Supp.,1995, § 79-1045; Laws 1996, LB 900, § 626; Laws 1997, LB 624, § 24; Laws 1998, LB 497, § 15; Laws 2005, LB 364, § 13; Laws 2013, LB263, § 24; Laws 2014, LB1042, § 10.  
Effective date April 17, 2014.

**79-992 Employees retirement system; discontinuance of employment; re-funds; reemployment.**

(1) A member who has five years or more of creditable service, excluding years of prior service acquired pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, and who severs his or her employment may elect to leave his or her contributions in the retirement system, in which event he or she shall receive a retirement allowance at normal retirement age based on the annuity earned to the date of such severance. Such member may elect to receive a retirement allowance at early retirement age if such member retires at an early retirement date. Such annuity shall be adjusted in accordance with section 79-9,100. Upon the severance of employment, except on account of retirement, a member shall be entitled to receive refunds as follows: (a) An amount equal to the accumulated contributions to the retirement system by the member; and (b) any contributions made to a previously existing system which were refundable under the terms of that system. Any member receiving a refund of contributions shall thereby forfeit and relinquish all accrued rights in the retirement system including all accumulated creditable service, except that if any member who has withdrawn his or her contributions as provided in this section reenters the service of the district and again becomes a member of the retirement system, he or she may restore any or all money previously received by him or her as a refund, including the interest on the amount of the restored refund for the period of his or her absence from the district's service as determined using the interest rate established by the board for interest on such restored refunds, and he or she shall then again receive credit for that portion of service which the restored money represents. Such restoration may be made as the trustees may direct through direct payments to the system or on an installment basis pursuant to a binding irrevocable payroll deduction authorized between the member and the school district over a period of not to exceed five years from the date of reemployment. Interest on delayed payments shall be at the rate of interest established by the board for determining interest on delayed payments

by members to the retirement system. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary.

(2) A retired member who returns to employment as an employee of the school district shall again participate in the retirement system as a new member and shall make contributions to the retirement system commencing upon reemployment. The retirement annuity of a retired member who returns to employment with the school district shall continue to be paid by the retirement system. A retired member who returns to employment as an employee of the school district shall receive creditable service only for service performed after his or her return to employment and in no event shall creditable service which accrues or the compensation paid to the member after such return to employment after retirement increase the amount of the member's original retirement annuity.

(3) Upon termination of the reemployed member, the member shall receive in addition to the retirement annuity which commenced at the time of the previous retirement (a) if the member has accrued five years or more of creditable service after his or her return to employment, excluding years of prior service acquired pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, a retirement annuity as provided in section 79-999 or 79-9,100, as applicable, calculated solely on the basis of creditable service and final average compensation accrued and earned after the member's return to employment after his or her original retirement, and as adjusted to reflect any payment in other than the normal form or (b) if the member has not accrued five years or more of creditable service after his or her return to employment, a refund equal to the member's accumulated contributions which were credited to the member after the member's return to employment. In no event shall the member's creditable service which accrued prior to a previous retirement be considered as part of the member's creditable service after his or her return to employment for any purpose of the Class V School Employees Retirement Act.

(4) In the event a member is entitled to receive a refund of contributions pursuant to subsection (1) or subdivision (3)(b) of this section in an amount greater than one thousand dollars, if the member does not elect to have the refund paid directly to himself or herself or transferred to an eligible retirement plan designated by the member as a direct rollover pursuant to section 79-998, then the refund of contributions shall be paid in a direct rollover to an individual retirement plan designated by the trustees.

**Source:** Laws 1951, c. 274, § 18, p. 920; Laws 1955, c. 321, § 2, p. 992; Laws 1963, c. 490, § 3, p. 1565; Laws 1967, c. 544, § 3, p. 1789; Laws 1972, LB 1116, § 2; Laws 1982, LB 131, § 8; Laws 1985, LB 215, § 7; Laws 1987, LB 298, § 10; Laws 1988, LB 551, § 6; Laws 1992, LB 1001, § 25; Laws 1993, LB 107, § 9; R.S.1943, (1994), § 79-1049; Laws 1996, LB 900, § 627; Laws 1997, LB 624, § 25; Laws 1998, LB 497, § 16; Laws 2001, LB 711, § 11; Laws 2005, LB 364, § 14; Laws 2006, LB 1019, § 11; Laws 2013, LB263, § 25.

**79-993 Reemployment; repay contributions; limitation; effect.**

For one year from May 30, 1987, any person who withdrew his or her accumulated contributions pursuant to section 79-992 prior to May 30, 1987, has again become an employee, and has not previously repaid all of his or her

accumulated contributions pursuant to such section may elect to repay any unpaid portion of these accumulated contributions to the retirement system for any number of years of creditable 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 creditable service for which the repayment is being made plus the regular 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 creditable service for which repayment is made as he or she had prior to the withdrawal of the accumulated contributions.

**Source:** Laws 1987, LB 298, § 1; R.S.1943, (1994), § 79-1049.01; Laws 1996, LB 900, § 628.

**79-994 Employee of another school district; contribution; limitation; effect.**

For one year from May 30, 1987, any person who was an employee of another school district prior to May 30, 1987, has joined or rejoined the retirement system, and has not previously paid into the retirement system a total of ten years of service in another school district may elect to pay the retirement system any unpaid portion of such service up to a total of ten years. Such electing employee shall furnish satisfactory proof that he or she has been employed for such period of time by another school district and shall pay to the retirement system the total amount which he or she would have contributed to the retirement system had he or she been a member of the retirement system plus the regular interest which would have accrued on such amount during such period under the retirement system. Such contribution shall be based on the most recent years' salary the employee earned in another school district if the salary is verified by the other school district or, if not, on his or her annual salary at the time he or she became a member and shall be payable in total for the period of time, not exceeding ten years, for which such member requests such prior service credit. Any person who pays such amount shall be given credit for any number of years of service which he or she has elected to pay for, not to exceed ten years of service rendered as an employee in another school district, and shall be given the same status as though he or she had been a member of the retirement system for such number of years, except as otherwise specifically provided in the Class V School Employees Retirement Act.

**Source:** Laws 1987, LB 298, § 2; R.S.1943, (1994), § 79-1049.02; Laws 1996, LB 900, § 629; Laws 1998, LB 497, § 17.

**79-995 Reemployment; military service; leave of absence; contribution; limitation; effect.**

For one year from May 30, 1987, any person who served in the armed forces as specified in subsection (1) of section 79-990 or who was on a leave of absence as specified in subsection (2) of such section, has again become an employee, and has not previously paid into the system for all of the years of military service or leave of absence permitted by such section may elect to pay into the retirement system for the total number of years of service authorized by such section but not previously paid in. The amount to be paid in by the member shall be calculated as provided in such section. Any person who pays such amount shall be given credit for any number of years of service for which he or she has elected to pay, not to exceed the total number of years authorized

by such section, and shall be given the same status as though he or she had been a member of the retirement system for such number of years, except as otherwise specifically provided in the Class V School Employees Retirement Act.

**Source:** Laws 1987, LB 298, § 3; R.S.1943, (1994), § 79-1049.03; Laws 1996, LB 900, § 630; Laws 1998, LB 497, § 18.

**79-996 Contributions; how paid; interest.**

(1) The payments provided for by sections 79-993, 79-994, and 79-997 may be made in equal installments over a period of not to exceed two years from the date of the election to make such payments. The payments provided for by section 79-995 may be made in equal installments over a period of not to exceed three years from the date of election to make such payments. Any person who elects to make payments on an installment basis shall be credited with prior service only in six-month increments and only after payment has been made to the retirement system to purchase each additional six-month increment.

(2) The rate of interest for the purchase of additional service credit pursuant to sections 79-990 and 79-991 and for determining the interest on a restored refund pursuant to section 79-992 or on delayed payments by members to the retirement system shall be determined by the board from time to time, and such rate of interest shall be used to determine applicable interest for a member's purchase of additional service credit, restored refund, or delayed payments that are made while such rate of interest is in effect.

**Source:** Laws 1987, LB 298, § 4; Laws 1988, LB 551, § 7; R.S.1943, (1994), § 79-1049.04; Laws 1996, LB 900, § 631; Laws 2013, LB263, § 26.

**79-997 Employee of educational service unit; contribution; limitation; effect.**

On or before May 27, 1988, any person who was an employee of an educational service unit in the State of Nebraska prior to April 7, 1988, has joined or rejoined the retirement system, and has not previously paid into the retirement system a total of ten years of service in another school district or educational service unit may elect to pay the retirement system any unpaid portion of such service up to a total of ten years. Such electing employee shall furnish satisfactory proof that he or she has been employed for such period of time by an educational service unit and shall pay to the retirement system the total amount which he or she would have contributed to the retirement system had he or she been a member of the retirement system plus the regular interest which would have accrued on such amount during such period under the retirement system. Such contribution shall be based on the most recent years' salary the employee earned in the educational service unit if the salary is verified by the educational service unit or, if not, on his or her annual salary at the time he or she became a member and shall be payable in total for the period of time, not exceeding ten years, for which such member requests such prior service credit. Any person who pays such amount shall be given credit for any number of years of service for which he or she has elected to pay, not to exceed ten years of service rendered as an employee in another school district or educational service unit, and shall be given the same status as though he or she had been a member of the retirement system for such number of years

except as otherwise specifically provided in the Class V School Employees Retirement Act. This section shall not apply to employees retiring prior to April 7, 1988.

**Source:** Laws 1988, LB 551, § 1; R.S.1943, (1994), § 79-1049.05; Laws 1996, LB 900, § 632; Laws 1998, LB 497, § 19.

**79-998 Additional service credits; accept payments and rollovers; limitations; how treated; tax consequences; direct transfer to retirement plan.**

(1) The retirement system may accept as payment for additional service credit that is purchased pursuant to sections 79-990 to 79-992 an eligible rollover distribution from or on behalf of the member who is making payments for such service credit if the eligible rollover distribution does not exceed the amount of payment required for the service credit being purchased by the member. The eligible rollover distribution may be contributed to the retirement system by the member or directly transferred from the plan that is making the eligible rollover distribution on behalf of the member. Contribution by a member pursuant to this section may only be made in the form of a cash contribution. For purposes of this section, an eligible rollover distribution means all or any portion of an amount that qualifies as an eligible rollover distribution under the Internal Revenue Code from:

(a) A plan of another employer which is qualified under section 401(a) or 403(a) of the Internal Revenue Code;

(b) An annuity contract or custodial account described in section 403(b) of the Internal Revenue Code;

(c) An eligible deferred compensation plan under section 457(b) of the Internal Revenue Code which is maintained by a governmental employer described in section 457(e)(1)(A) of the Internal Revenue Code; or

(d) An individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over to an employer plan under the Internal Revenue Code.

(2) The retirement system may accept as payment for service credit that is purchased pursuant to sections 79-990 to 79-992 a direct trustee-to-trustee transfer from an eligible deferred compensation plan as described in section 457(e)(17) of the Internal Revenue Code on behalf of a member who is making payments for such service credit if the amount transferred from the eligible deferred compensation plan does not exceed the amount of payment required for the service credit being purchased and the purchase of such service credit qualifies as the purchase of permissive service credit by the member as defined in section 415(n)(3) of the Internal Revenue Code.

(3) The trustees may establish rules, regulations, and limitations on the eligible rollover distributions and direct trustee-to-trustee transfers that may be accepted by the retirement system pursuant to this section, including restrictions on the type of assets that may be transferred to the retirement system.

(4) Cash and other properties contributed or transferred to the system pursuant to this section shall be deposited and held as a commingled asset of the system and shall not be separately accounted for or invested for the member's benefit. Contributions or direct transfers made by or on behalf of any member pursuant to this section shall be treated as qualifying payments under sections 79-990 to 79-992 and as employee contributions for all other purposes

of the Class V School Employees Retirement Act except in determining federal and state tax treatment of distributions from the system.

(5) The system, the board, the trustees, and their respective members, officers, and employees shall have no responsibility or liability with respect to the federal and state income tax consequences of any contribution or transfer to the system pursuant to this section, and the trustees may require as a condition to the system's acceptance of any rollover contribution or transfer satisfactory evidence that the proposed contribution or transfer is a qualifying rollover contribution or trustee-to-trustee transfer under the Internal Revenue Code and reasonable releases or indemnifications from the member against any and all liabilities which may in any way be connected with such contribution or transfer.

(6) Effective January 1, 1993, any member who is to receive an eligible rollover distribution, as defined in the Internal Revenue Code, from the system may, in accordance with such rules, regulations, and limitations as may be established by the trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code. Any such election shall be made in the form and within the time periods established by the trustees.

(7) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after September 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the system may, in accordance with such rules, regulations, and limitations as may be established by the trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(8) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(9) All distributions from the system shall be subject to all withholdings required by federal or state tax laws.

**Source:** Laws 1992, LB 1001, § 27; Laws 1993, LB 107, § 10; Laws 1995, LB 574, § 76; R.S.Supp., 1995, § 79-1049.06; Laws 1996, LB 900, § 633; Laws 1998, LB 497, § 20; Laws 2001, LB 711, § 12; Laws 2002, LB 407, § 47; Laws 2012, LB916, § 25.

### **79-999 Employees retirement system; annuity; how credited.**

After the date of establishment of the retirement system, each member shall be credited annually with a retirement annuity of an amount equal to one and one-half percent of the salary or wage earned by him or her during the then current fiscal year not in excess of five thousand dollars, except that (1) for each member who retires on or after August 31, 1969, such credit shall be an amount equal to one and sixty-five hundredths percent of such salary or wage not in excess of five thousand dollars and (2) for each member who chose the

new system in 1951 and who retires on or after August 31, 1976, for service from September 1, 1951, to August 31, 1955, such credit shall be two and four-tenths percent of such salary or wage not in excess of five thousand dollars, for service from September 1, 1955, to August 31, 1963, one and forty-four hundredths percent of such salary or wage not in excess of six thousand dollars, for service from September 1, 1963, to August 31, 1969, one and forty-four hundredths percent of such salary or wage up to the social security wage base, plus two and four-tenths percent of salary or wage in excess thereof, and for service after September 1, 1969, one and forty-four hundredths percent of the first seventy-eight hundred dollars of such salary or wage and two and four-tenths percent of the excess of such salary or wage over seventy-eight hundred dollars. With respect to service rendered prior to the date of establishment of the retirement system, each employee in service or on leave of absence on such date shall be entitled to an annuity on account of prior service. Such annuity shall be such percentage of the maximum annuity to which such member might have been entitled under the terms of a retirement plan previously in effect as the number of years of service under such plan bears to the total number of years for which credit for service might have been granted under such plan, except that no credit shall be given in excess of the maximum annuity provided under such preexisting plan. The number of years of prior service for which credit shall be given under this section shall be the number of years of service with which the employee is credited under such preexisting plan on May 21, 1951. The sum of these two annuities shall constitute the retirement allowance to which the member shall be entitled to be paid beginning on his or her retirement date. Such annuity shall be paid in twelve equal monthly installments unless the amount thereof is less than ten dollars per month in which event payments shall be made quarterly or semiannually.

**Source:** Laws 1951, c. 274, § 13, p. 917; Laws 1969, c. 724, § 1, p. 2754; Laws 1972, LB 1116, § 1; Laws 1976, LB 994, § 2; Laws 1987, LB 298, § 7; R.S.1943, (1994), § 79-1044; Laws 1996, LB 900, § 634.

**79-9,100 Employees retirement system; formula retirement annuity; computation.**

(1) In lieu of the retirement annuity provided by section 79-999 or 79-9,113, any member who becomes eligible to receive a retirement annuity after February 20, 1982, under the Class V School Employees Retirement Act shall receive a formula retirement annuity based on final average compensation, except that if the monthly formula retirement annuity based on final average compensation is less than the monthly retirement annuity specified in section 79-999 or 79-9,113, accrued to the date of retirement or August 31, 1983, whichever first occurs, the member shall receive the monthly retirement annuity specified in section 79-999 or 79-9,113 accrued to the date of retirement or August 31, 1983, whichever first occurs.

(2) The monthly formula retirement annuity based on final average compensation shall be determined by multiplying the number of years of creditable service for which such member would otherwise receive the retirement annuity provided by section 79-999 or 79-9,113 by one and one-half percent of his or her final average compensation. For retirements after June 15, 1989, and before April 18, 1992, the applicable percentage shall be one and sixty-five hundredths percent of his or her final average compensation. For retirements

on or after April 18, 1992, and before June 7, 1995, the applicable percentage shall be one and seventy-hundredths percent of his or her final average compensation. For retirements on or after June 7, 1995, and before March 4, 1998, the applicable percentage shall be one and eighty-hundredths percent of his or her final average compensation. For retirements on or after March 4, 1998, and before March 22, 2000, the applicable percentage shall be one and eighty-five hundredths percent of his or her final average compensation. For retirements on or after March 22, 2000, the applicable percentage shall be two percent of his or her final average compensation.

(3) Final average compensation shall be determined:

(a) Except as provided in subdivision (3)(b) of this section, by dividing the member's total compensation for the three fiscal years in which such compensation was the highest by thirty-six; and

(b) For an employee who became a member on or after July 1, 2013, by dividing the member's total compensation for the five fiscal years in which such compensation was the highest by sixty.

(4) For retirements before June 7, 1995, if the annuity begins prior to the sixty-second birthday of the member and the member has not completed thirty-five or more years of creditable service, the annuity at the date it begins shall be the actuarial equivalent of the annuity deferred to the sixty-second birthday of the member. If the annuity begins prior to the sixty-second birthday of the member and the member has completed thirty-five or more years of creditable service, the annuity shall not be reduced. For retirements on or after June 7, 1995, any retirement annuity which begins prior to the sixty-second birthday of the member shall be reduced by twenty-five hundredths percent for each month or partial month between the date the annuity begins and the member's sixty-second birthday. If the annuity begins at a time when:

(a) The sum of the member's attained age and creditable service is eighty-five or more, the annuity shall not be reduced;

(b) The sum of the member's attained age and creditable service totals eighty-four, the annuity shall not be reduced by an amount greater than three percent of the unreduced annuity;

(c) The sum of the member's attained age and creditable service totals eighty-three, the annuity shall not be reduced by an amount greater than six percent of the unreduced annuity; and

(d) The sum of the member's attained age and creditable service totals eighty-two, the annuity shall not be reduced by an amount greater than nine percent of the unreduced annuity.

(5) For purposes of this section, a member's creditable service and attained age shall be measured in one-half-year increments.

(6) The normal form of the formula retirement annuity based on final average compensation shall be 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 a total of sixty monthly payments have been made. A member may elect to receive, in lieu of the normal form of annuity, an actuarially equivalent annuity in any optional form provided by section 79-9,101.

(7) Any member receiving a formula retirement annuity based on final average compensation shall also receive the service annuity to be paid by the State of Nebraska as provided in sections 79-933 to 79-935 and 79-951.

**Source:** Laws 1982, LB 131, § 4; Laws 1985, LB 215, § 3; Laws 1989, LB 237, § 2; Laws 1992, LB 1001, § 22; Laws 1995, LB 505, § 5; R.S.Supp.,1995, § 79-1044.01; Laws 1996, LB 900, § 635; Laws 1998, LB 497, § 21; Laws 1998, LB 1191, § 62; Laws 2000, LB 155, § 2; Laws 2013, LB553, § 11.

**Cross References**

For supplemental retirement benefits, see sections 79-940 to 79-947.

**79-9,101 Employees retirement system; annuity; election; remaining payments.**

Any time prior to receiving the first annuity payment, the member may elect to receive in lieu of such annuity, but payable in the same manner, an actuarially equivalent annuity in one of the following forms:

(1) A joint and survivorship annuity which shall continue after the death of the member to the death of the (a) member's spouse or (b) other designated beneficiary whose adjusted age in the calendar year in which the payment of the annuity commences is no more than ten years less than the attained age of the member in such calendar year;

(2) A joint and survivorship annuity which shall continue after the death of the member so that seventy-five percent of the amount of the member's monthly benefit under this option shall be paid monthly to the (a) member's spouse until his or her death or (b) other designated beneficiary whose adjusted age in the calendar year in which the payment of the annuity commences is no more than nineteen years less than the attained age of the member in such calendar year until his or her death;

(3) 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 one hundred twenty monthly payments have been made the monthly payments will be continued as provided in this section until a total of one hundred twenty monthly payments have been made;

(4) A joint and survivorship annuity which will continue after the death of the member to the death of the (a) member's spouse or (b) other designated beneficiary whose adjusted age in the calendar year in which the payment of the annuity commences is no more than ten years less than the attained age of the member in such calendar year but which annuity shall, upon the spouse's or designated beneficiary's death before the death of the member, be increased after such death for the remaining life of the member so that the monthly benefit equals the monthly benefit which would have been payable to the member had the member selected the normal form of the formula retirement annuity specified in section 79-9,100; or

(5) A joint and survivorship annuity which shall continue after the death of the member so that fifty percent of the amount of the member's monthly benefit under this option shall be paid monthly to a designated beneficiary until his or her death.

For purposes of the annuities provided in subdivisions (1), (2), and (4) of this section, a designated beneficiary's adjusted age means the attained age of the

designated beneficiary in the calendar year in which payment of the annuity commences plus the number of years, if any, by which the member's attained age in the calendar year in which payment of the annuity commences is younger than seventy years.

Each of these actuarially equivalent annuities, except for the form provided in subdivision (3) of this section, shall continue for a minimum of sixty months.

The amount of each monthly payment shall be the amount specified in the form elected by the member.

Whether the member elects the normal form or one of the optional forms of the formula retirement annuity, if the member and his or her designated beneficiary die before the specified monthly payments have been made, the remaining number of the specified payments shall be paid to the individual or individuals designated in writing, on forms prescribed by the system, by the last surviving of the member or the member's designated beneficiary and, if no such designation is made, to the estate of the last surviving of the member or the member's designated beneficiary. At the election of a beneficiary, a single sum payment which is the actuarial equivalent of the remaining monthly payments to be paid to such beneficiary may be paid in lieu of the annuity benefit otherwise to be provided under the normal form or the optional form described in subdivision (3) of this section.

**Source:** Laws 1951, c. 274, § 15, p. 919; Laws 1985, LB 215, § 4; Laws 1989, LB 237, § 3; Laws 1991, LB 350, § 5; Laws 1993, LB 107, § 6; Laws 1995, LB 505, § 7; R.S.Supp.,1995, § 79-1046; Laws 1996, LB 900, § 636; Laws 2001, LB 711, § 13; Laws 2005, LB 364, § 15.

**79-9,102 Employees retirement system; annuity or other benefit; limitations.**

(1) Notwithstanding any other provision of the Class V School Employees Retirement Act, no member or beneficiary of the retirement system shall receive in any calendar year an annuity or other benefit which would exceed the maximum benefit permitted under section 415 of the Internal Revenue Code, or any successor provision and the regulations issued thereunder, as they may be amended from time to time, and as adjusted as of January 1 of each calendar year to the dollar limitation as determined for such year by the Commissioner of Internal Revenue pursuant to section 415(d) of the Internal Revenue Code to reflect cost-of-living adjustments, and the amount of benefit to be paid to any member or beneficiary by the retirement system shall be adjusted each calendar year, if necessary, to conform with the maximum benefit permitted under section 415 of the Internal Revenue Code. The cost-of-living adjustment to the maximum benefit permitted under section 415 of the Internal Revenue Code shall apply to determining the maximum benefit of a member who severed employment or commenced receiving benefits prior to the effective date of the adjustment.

(2) Any payments provided for by sections 79-990, 79-991, and 79-992 for the purchase or restoration of creditable service shall be subject to the limitations of section 415 of the Internal Revenue Code on annual additions to the system, and the trustees may suspend payments, alter installment periods, or, if such suspension or alteration is not possible, deny the purchase of all or a portion of the creditable service desired to be purchased, as necessary to comply with the requirements of section 415 of the Internal Revenue Code.

(3) This section is intended to meet and incorporate the requirements of section 415 of the Internal Revenue Code and regulations under that section that are applicable to governmental plans and shall be construed in accordance with section 415 of the Internal Revenue Code and the regulations issued thereunder and shall, by this reference, incorporate any subsequent changes made to such section as the same may apply to the retirement system.

**Source:** Laws 1985, LB 215, § 8; Laws 1995, LB 574, § 75; R.S.Supp.,1995, § 79-1046.01; Laws 1996, LB 900, § 637; Laws 1997, LB 623, § 31; Laws 1998, LB 497, § 22; Laws 2013, LB263, § 27.

**79-9,103 Annuity payment; cost-of-living adjustment; additional adjustments.**

(1) Any annuity paid on or after September 1, 1983, to a member who retired prior to February 21, 1982, pursuant to the Class V School Employees Retirement Act, or to such member's beneficiary, or to a person who retired under the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, or to such person's beneficiary, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1983, except that such increase shall not exceed the sum of one dollar and fifty cents per month for each year of creditable service and one dollar per month for each completed year of retirement as measured from the effective date of retirement to June 30, 1983. No separate adjustment in such annuity shall be made as a result of the changes made in section 79-9,113 pursuant to Laws 1983, LB 488. If a joint and survivor annuity was elected, the increase shall be actuarially adjusted so that the joint and survivor annuity remains the actuarial equivalent of the life annuity otherwise payable.

(2) In addition to the cost-of-living adjustment provided in subsection (1) of this section, any annuity paid on or after September 1, 1986, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before September 1, 1985, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1986, except that such increase shall not exceed (a) three and one-half percent for annuities first paid on or after September 1, 1984, (b) seven percent for annuities first paid on or after September 1, 1983, but before September 1, 1984, or (c) ten and one-half percent for all other annuities.

(3) In addition to the cost-of-living adjustment provided in subsections (1) and (2) of this section, any annuity paid on or after September 1, 1989, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before September 1, 1988, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1989, except that such increase shall not exceed (a) three percent for annuities first paid on or after September 1, 1987, (b) six percent for annuities first paid on or after September 1, 1986, but before September 1, 1987, or (c) nine percent for all other annuities.

(4) In addition to the cost-of-living adjustment provided in subsections (1), (2), and (3) of this section, any annuity paid on or after September 1, 1992, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1991, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increase shall not exceed (a) three percent for annuities first paid after October 1, 1990, (b) six percent for annuities first paid after October 1, 1989, but on or before October 1, 1990, or (c) nine percent for all other annuities.

(5) In addition to the cost-of-living adjustment provided in subsections (1), (2), (3), and (4) of this section, any annuity paid on or after September 1, 1995, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1994, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1995, except that such increase shall not exceed (a) three percent for annuities first paid after October 1, 1993, (b) six percent for annuities first paid after October 1, 1992, but on or before October 1, 1993, or (c) nine percent for all other annuities.

(6) In addition to the cost-of-living adjustment provided in subsections (1), (2), (3), (4), and (5) of this section, any annuity paid pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1994, shall be subject to adjustment to equal the greater of (a) the annuity payable to the member or beneficiary as adjusted, if applicable, under the provisions of subsection (1), (2), (3), (4), or (5) of this section or (b) ninety percent of the annuity which results when the original annuity that was paid to the member or beneficiary (before any cost-of-living adjustments under this section), is adjusted by the increase in the cost of living or wage levels between the commencement date of the annuity and June 30, 1995.

(7) In addition to the cost-of-living adjustment provided in subsections (1), (2), (3), (4), (5), and (6) of this section, any annuity paid on or after September 1, 1998, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 3, 1997, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1998, except that such increase shall not exceed (a) three percent for annuities first paid after October 1, 1996, (b) six percent for annuities first paid after October 1, 1995, but on or before October 1, 1996, or (c) nine percent for all other annuities.

(8) Beginning January 1, 2000, and on January 1 of every year thereafter, for employees of Class V school districts who were members prior to July 1, 2013, a cost-of-living adjustment shall be made for any annuity being paid pursuant to the act, or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 3 preceding such January 1 adjustment date. The cost-of-living adjustment for any such annuity shall be the lesser of (a) one and one-half percent or (b) the

increase in the consumer price index from the date such annuity first became payable through the August 31 preceding the January 1 adjustment date as reduced by the aggregate cost-of-living adjustments previously made to the annuity pursuant to this section.

(9) Beginning January 1, 2014, and on January 1 of every year thereafter, for employees of Class V school districts who became members on or after July 1, 2013, a cost-of-living adjustment shall be made for any annuity being paid pursuant to the act and on which the first payment was dated on or before October 3 preceding such January 1 adjustment date. The cost-of-living adjustment for any such annuity shall be the lesser of (a) one percent or (b) the increase in the consumer price index from the date such annuity first became payable through the August 31 preceding the January 1 adjustment date as reduced by the aggregate cost-of-living adjustments previously made to the annuity pursuant to this section.

(10) Beginning September 1, 1999, the actuary shall make an annual valuation of the assets and liabilities of the system. If the annual valuation made by the actuary, as approved by the trustees, indicates that the system has sufficient actuarial surplus to provide for a cost-of-living adjustment in addition to the adjustment made pursuant to subsection (8) or (9) of this section, the board may, in its discretion, declare by resolution that each annuity being paid pursuant to the act, or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 3 of the year such resolution is adopted, shall be increased beginning as of the January 1 following the date of the board's resolution by such percentage as may be declared by the board, except that such increase for any such annuity shall not exceed the increase in the consumer price index from the date such annuity first became payable through the applicable valuation date as reduced by the aggregate cost-of-living adjustments previously made to the annuity pursuant to this section.

(11) Except for the adjustments pursuant to subsection (13) of this section, the consumer price index to be used for determining any cost-of-living adjustment under this section shall be the Consumer Price Index - All Urban Consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor. If this consumer price index is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board, upon recommendation of the trustees, which shall be a reasonable representative measurement of the cost of living for retired employees. An annuity as increased by any cost-of-living adjustment made under this section shall be considered the base annuity amount for the purpose of future adjustments pursuant to this section. In no event shall any cost-of-living adjustment be deemed to affect or increase the amount of the base retirement annuity of a member as determined under section 79-999 or 79-9,100.

(12) Any decision or determination by the board (a) to declare or not declare a cost-of-living adjustment, (b) as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living adjustment, or (c) pursuant to the selection of a substitute index shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system or increasing the benefits of members under the system, nor shall the board or trustees be constrained from supporting any

such change to the system, notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living adjustments.

(13) The Legislature finds and declares that there exists in this state a pressing need to attract and retain qualified and dedicated public school employees and that one of the factors prospective public school employees consider when seeking or continuing public school employment is the retirement system and benefits the employment provides. The Legislature further finds that over the past decades, as reflected by the Medical Price Index published by the United States Department of Labor, the cost of medical care, including the cost of medications and insurance coverages, has increased at a rate in excess of that by which the Consumer Price Index - All Urban Consumers has increased. The Legislature further finds and declares that there accordingly exists a need to adjust the amount of retirement benefits paid to retired public school employees in order to assist them in meeting the increased cost of medical care. Therefore, in addition to the cost-of-living adjustments provided in subsections (1) through (12) of this section, commencing on October 3, 2001, and on October 3 of every year thereafter, a medical cost-of-living adjustment shall be paid to any annuitant who has been paid an annuity from the retirement system for at least ten years through the October 3 adjustment date. The cost-of-living adjustment shall be paid in the form of a supplemental annuity providing monthly payments equal to the amount which results when (a) the fraction, not to exceed one, that results when the annuitant's years of creditable service at his or her retirement date is divided by twenty, is multiplied by (b) the product of ten dollars times the number of years, including attained one-half years, that such annuitant has received annuity payments from the retirement system through the October 3 adjustment date. The supplemental annuity being paid to an annuitant shall increase by ten dollars on October 3 of each subsequent year to reflect the additional year of annuity payments to the annuitant until the total amount of the supplemental annuity is two hundred fifty dollars. In no event shall the medical cost-of-living adjustment for any annuitant pursuant to this subsection result in the payment of a supplemental annuity exceeding two hundred fifty dollars per month. The supplemental annuity paid to an annuitant pursuant to this subsection shall cease at the death of the annuitant regardless of the form of retirement annuity being paid to the annuitant at the time of his or her death.

**Source:** Laws 1983, LB 488, § 2; Laws 1986, LB 1048, § 5; Laws 1989, LB 237, § 8; Laws 1992, LB 1001, § 26; Laws 1993, LB 107, § 11; Laws 1995, LB 505, § 9; R.S.Supp.,1995, § 79-1056.06; Laws 1996, LB 900, § 638; Laws 1998, LB 497, § 23; Laws 2001, LB 711, § 14; Laws 2013, LB553, § 12.

**79-9,104 Employees retirement system; annuities; benefits; exempt from claims of creditors; exceptions; payment for civil damages; conditions.**

(1) Except as provided in subsection (4) of this section, all annuities and other benefits payable under the Class V School Employees Retirement Act and all accumulated credits of members of the retirement system shall not be assignable or subject to execution, garnishment, or attachment except to the extent that such annuity or benefit is subject to a qualified domestic relations order as such term is defined in and which meets the requirements of section 414(p) of the Internal Revenue Code. The payment of any annuity or benefit subject to such

order shall take priority over any payment made pursuant to subsection (4) of this section. Payments under such a qualified domestic relations order shall be made only after the administrator of the retirement system receives written notice of such order and such additional information and documentation as the administrator may require.

(2) In lieu of the assignment of a member's future annuity or benefit to the member's spouse or former spouse, the retirement system shall permit the spouse or former spouse of a member to receive, pursuant to a qualified domestic relations order, a single sum payment of a specified percentage of the member's accumulated contributions on the condition that upon the payment of such amount the spouse or former spouse shall have no further interest in the retirement system or in the remaining benefit of the member under the retirement system.

(3) A member's interest and benefits under the retirement system shall be reduced, either at termination of employment, retirement, disability, or death, by the actuarial value of the benefit assigned or paid to the member's spouse, former spouse, or other dependents under a qualified domestic relations order, as determined by the plan actuary on the basis of the actuarial assumptions then recommended by the actuary pursuant to section 79-984.

(4) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits earned under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

**Source:** Laws 1951, c. 274, § 29, p. 925; Laws 1991, LB 350, § 8; R.S.1943, (1994), § 79-1060; Laws 1996, LB 900, § 639; Laws 1997, LB 623, § 32; Laws 1998, LB 497, § 24; Laws 2000, LB 155, § 3; Laws 2012, LB916, § 26.

**79-9,105 Employees retirement system; member; disability; benefits.**

(1) Any member with five or more years of creditable service, excluding years of prior service acquired pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, who becomes totally disabled for further performance of duty on or after March 22, 2000, may be approved for deferred disability retirement by the board. In the case of such deferred disability retirement, the member, during the period specified in subsection (3) of this section, shall be credited with creditable service for each year or portion thereof, to be determined in accordance with board policies governing creditable service, that the member defers retirement, up to a maximum of thirty-five years of total creditable

service, including creditable service accrued before the member became totally disabled. The member approved for deferred disability retirement may at any time of the member's choosing request the deferral to end and retirement annuity payments to begin. The retirement annuity of such member shall be based on the total number of years of the member's creditable service, including the years credited to the member during his or her total disability under this section, and the member's final average salary as of the date that the member became totally disabled and as adjusted from such date by a percentage equal to the cumulative percentage cost-of-living adjustments that were made or declared for annuities in pay status pursuant to section 79-9,103 after the date of the board's approval for deferred disability retirement and before the cessation of the accrual of additional creditable service pursuant to subsection (3) of this section. Except as provided in subsection (4) of this section, the retirement annuity so determined for the member shall be payable to the member without reduction due to any early commencement of benefits, except that the retirement annuity shall be reduced by the amount of any periodic payments to such employee as workers' compensation benefits. Additional creditable service acquired through deferred disability retirement shall apply to the service requirements specified in section 79-9,106. The board shall consider a member to be totally disabled when it has received an application by the member and a statement by at least two licensed and practicing physicians designated by the board certifying that the member is totally and presumably permanently disabled and unable to perform his or her duties as a consequence thereof.

(2) Notwithstanding the provisions of subsection (1) of this section, the payment of the retirement annuity of a member may not be deferred later than the member's required beginning date as defined in section 401(a)(9) of the Internal Revenue Code, as defined in section 49-801.01. If the payment of a disabled member's retirement annuity is required to commence before the member has elected to end his or her deferred disability retirement, the amount of benefit that would have accrued pursuant to subsection (1) of this section in the fiscal year of the member's required beginning date, and in each subsequent fiscal year through the year of the member's election to end the deferred disability retirement period, shall be reduced, but not below zero, by the actuarial equivalent of the payments which were paid to the member during each such fiscal year and after the member's required beginning date. The retirement annuity of any member that commences before the end of the member's deferred disability retirement shall be adjusted as of each September 1 pursuant to the requirements of this subsection.

(3) The accrual of creditable service and any adjustment of final average salary provided in subsection (1) of this section shall begin from the first day of the month following the date of the first of the two examinations by which the member is determined by the board to be totally disabled, shall continue only so long as the member does not receive any wages or compensation for services, and shall end at the earlier of (a) the time total disability ceases as determined by the board or (b) the date the member elects to end the deferred disability retirement and begin to receive his or her retirement annuity. The board may require periodic proof of disability but not more frequently than semiannually.

(4) The payment of any retirement annuity to a disabled member, which begins to be paid under this section (a) before the member's sixty-second

birthday or (b) at a time before the sum of the member's attained age and creditable service is eighty-five or more, shall be suspended if the board determines at any time before the member's sixty-second birthday that the member's total disability has ceased. Payment of the retirement annuity of such member as determined under this section shall recommence at the member's early retirement date or normal retirement date but shall be subject to reduction at such time as specified in section 79-9,100.

**Source:** Laws 1951, c. 274, § 17, p. 919; Laws 1957, c. 354, § 2, p. 1202; Laws 1963, c. 490, § 2, p. 1565; Laws 1982, LB 131, § 7; Laws 1985, LB 215, § 6; Laws 1987, LB 298, § 9; Laws 1988, LB 551, § 5; Laws 1991, LB 350, § 6; Laws 1993, LB 107, § 8; R.S.1943, (1994), § 79-1048; Laws 1996, LB 900, § 640; Laws 2000, LB 155, § 4; Laws 2001, LB 711, § 15; Laws 2013, LB553, § 13.

**79-9,106 Employees retirement system; member; death; effect; survivorship annuity; amount; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.**

(1) Upon the death of a member who has not yet retired and who has twenty years or more of creditable service, the member's primary beneficiary shall receive a survivorship annuity in accordance with subdivision (1) of section 79-9,101 if the primary beneficiary is (a) the member's spouse or (b) one other designated beneficiary whose attained age in the calendar year of the member's death is no more than ten years less than the attained age of the member in such calendar year. The amount of such actuarially equivalent annuity shall be calculated using the attained ages of the member and the beneficiary and be based on the annuity earned to the date of the member's death without reduction due to any early commencement of benefits. Within sixty days from the date of the member's death, if the member has not previously filed with the administrator of the retirement system a form requiring that only the survivorship annuity be paid, the beneficiary may request to receive in a lump sum an amount equal to the member's accumulated contributions. If prior to the member's death, the member files with the administrator of the retirement system a form requiring that the beneficiary receive a lump-sum settlement in lieu of the survivorship annuity, the beneficiary shall receive, in lieu of the survivorship annuity, a lump-sum settlement in an amount equal to the member's accumulated contributions notwithstanding any other provision of this section.

(2) Upon the death of a member who has not yet retired and who has less than twenty years of creditable service or upon the death of a member who has not yet retired and who has twenty years or more of creditable service but whose beneficiary does not meet the criteria in subsection (1) of this section, the member's beneficiary or, if no beneficiary has been named, the member's estate shall receive in a lump sum an amount equal to the member's accumulated contributions.

(3) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal

Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the school district and such employment had terminated on the date of the member's death.

**Source:** Laws 1951, c. 274, § 16, p. 919; Laws 1965, c. 527, § 1, p. 1659; Laws 1967, c. 544, § 2, p. 1788; Laws 1982, LB 131, § 6; Laws 1985, LB 215, § 5; Laws 1992, LB 1001, § 24; Laws 1993, LB 107, § 7; R.S.1943, (1994), § 79-1047; Laws 1996, LB 900, § 641; Laws 2001, LB 711, § 16; Laws 2012, LB916, § 27.

**79-9,107 Employees retirement system; funds; investment; violations; penalty.**

The funds of the retirement system which are not required for current operations shall be invested and reinvested by the trustees subject to the approval of the board of education or Class V Retirement System Board as provided in sections 79-9,108 to 79-9,111. Except as otherwise provided in the Class V School Employees Retirement Act, no trustee and no member of the board shall have any direct interest in the income, gains, or profits of any investment made by the trustees, nor shall any such person receive any pay or emolument for services in connection with any such investment. No trustee or member of the board shall become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system. Any person who violates any of these restrictions shall be guilty of a Class II misdemeanor.

**Source:** Laws 1951, c. 274, § 20, p. 921; Laws 1967, c. 545, § 1, p. 1791; Laws 1977, LB 39, § 257; Laws 1986, LB 1048, § 1; Laws 1989, LB 237, § 4; R.S.1943, (1994), § 79-1051; Laws 1996, LB 900, § 642; Laws 1998, LB 497, § 25; Laws 2006, LB 1024, § 67.

**79-9,108 Employees retirement system; funds; investment manager; duties; board of education or Class V Retirement System Board; investments; approve or disapprove.**

The trustees, with approval of the board of education or Class V Retirement System Board, shall invest and reinvest funds of the retirement system. A professional investment manager may be employed by the trustees subject to approval of the board of education or Class V Retirement System Board. The professional investment manager shall be responsible for the purchase, sale, exchange, investment, or reinvestment of such funds subject to guidelines determined by the trustees. The trustees shall each month submit a report to the board of education or Class V Retirement System Board with respect to the investment of funds. The board of education or Class V Retirement System Board shall approve or disapprove the investments in the report, and in the event of disapproval of any investment, the board shall direct the sale of all or part of such investment or establish future policy with respect to that type of investment.

**Source:** Laws 1967, c. 545, § 2, p. 1791; Laws 1991, LB 350, § 7; R.S.1943, (1994), § 79-1051.01; Laws 1996, LB 900, § 643; Laws 2006, LB 1024, § 68.

**79-9,109 Employees retirement system; investments; default of principal or interest; trustees; powers and duties.**

In the event of default in the payment of principal of, or interest on, the investments made, the trustees are authorized to institute the proper proceedings to collect such matured principal or interest, and may, with approval of the board of education or Class V Retirement System Board, accept for exchange purposes, refunding bonds or other evidences of indebtedness with interest rates to be agreed upon with the obligor. The trustees, with the approval of the board of education or Class V Retirement System Board, are further authorized to make such compromises, adjustments, or disposition of the past-due interest or principal as are in default, or to make such compromises and adjustments as to future payments of interest or principal as deemed advisable for the purpose of protecting the investment.

**Source:** Laws 1967, c. 545, § 3, p. 1792; R.S.1943, (1994), § 79-1051.02; Laws 1996, LB 900, § 644; Laws 2006, LB 1024, § 69.

**79-9,110 Employees retirement system; investments; mortgages on real property, when.**

Investments may also be made in first mortgages on improved real property which are insured by the Federal Housing Administration under the National Housing Act, are guaranteed by the United States Department of Veterans Affairs under the federal Veterans' Benefits Act of 1958 and any amendments thereto, or are otherwise insured or guaranteed by the United States of America or any agency or instrumentality thereof so as to give the investor protection essentially the same as that provided by such National Housing Act or federal Veterans' Benefits Act of 1958 and any amendments thereto or in notes, bonds, or debentures fully collateralized by such protected mortgages.

**Source:** Laws 1967, c. 545, § 6, p. 1795; Laws 1991, LB 2, § 21; R.S.1943, (1994), § 79-1051.05; Laws 1996, LB 900, § 645.

**79-9,111 Employees retirement system; investments; trustees; powers and duties.**

The trustees shall invest the funds of the retirement system in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trustees shall not purchase investments on margin or enter into any futures contract or other contract obligation which requires the payment of margin or enter into any similar contractual arrangement which may result in losses in excess of the amount paid or deposited with respect to such investment or contract, unless such transaction constitutes a hedging transaction or is incurred for the purpose of portfolio or risk management for the funds and investments of the system. The trustees may write covered call options or put options. The trustees shall establish written guidelines for any such option, purchase, or contract obligation. Any such option, purchase, or contract obligation shall be governed by the prudent investment rule stated in this section for investment of the funds of the system. The trustees may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are

received as collateral. If shares of stock are purchased under this section, all proxies may be voted by the trustees.

**Source:** Laws 1989, LB 237, § 6; R.S.1943, (1994), § 79-1051.07; Laws 1996, LB 900, § 646; Laws 1997, LB 624, § 26.

**79-9,112 Repealed. Laws 2001, LB 711, § 21.**

**79-9,113 Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.**

(1)(a) If, at any future time, a majority of the eligible members of the retirement system votes to be included under an agreement providing old age and survivors insurance under the Social Security Act of the United States, the contributions to be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-999, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1995, all employees of the school district shall contribute an amount equal to the membership contribution which shall be six and three-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 2007, all employees of the school district shall contribute an amount equal to the membership contribution which shall be

seven and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2009, all employees of the school district shall contribute an amount equal to the membership contribution which shall be eight and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2011, all employees of the school district shall contribute an amount equal to the membership contribution which shall be nine and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2013, all employees of the school district shall contribute an amount equal to the membership contribution which shall be nine and seventy-eight hundredths percent of the compensation paid in each fiscal year.

(b) The contributions by the school district in any fiscal year beginning on or after September 1, 1999, shall be the greater of (i) one hundred percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees.

(c) The contributions by the school district in any fiscal year beginning on or after September 1, 2007, shall be the greater of (i) one hundred one percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees.

(d) The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section. Every employee who is a member of the system shall be deemed to consent and agree to such deductions and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment except as to benefits provided under the Class V School Employees Retirement Act.

(e) After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages covered by old age and survivors insurance and one and sixty-five hundredths percent of salary or wages above that amount for service performed after September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year, and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, not to

become members of the system shall not be less than they would have been had they remained under any preexisting system to date of retirement.

(f) Members of this system having the service qualifications of members of the School Employees Retirement System of the State of Nebraska, as provided by section 79-926, shall receive the state service annuity provided by sections 79-933 to 79-935 and 79-951.

(2) The school district 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, except that the school district 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 Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Beginning September 1, 1995, the school district shall also pick up any contributions required by sections 79-990, 79-991, and 79-992 which are made under an irrevocable payroll deduction authorization between the member and the school district, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal and state income taxes based upon these contributions until the Internal Revenue Service rules that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the system. Employee contributions picked up shall be treated for all purposes of the Class V School Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

**Source:** Laws 1951, c. 274, § 25, p. 923; Laws 1953, c. 308, § 4, p. 1029; Laws 1955, c. 321, § 3, p. 993; Laws 1963, c. 490, § 5, p. 1567; Laws 1969, c. 724, § 2, p. 2755; Laws 1972, LB 1116, § 3; Laws 1976, LB 994, § 3; Laws 1982, LB 131, § 12; Laws 1983, LB 488, § 1; Laws 1984, LB 218, § 3; Laws 1989, LB 237, § 7; Laws 1995, LB 505, § 8; Laws 1995, LB 574, § 77; R.S.Supp., 1995, § 79-1056; Laws 1996, LB 900, § 648; Laws 1997, LB 623, § 33; Laws 1998, LB 497, § 26; Laws 1998, LB 1191, § 63; Laws 2000, LB 155, § 5; Laws 2007, LB596, § 3; Laws 2009, LB187, § 3; Laws 2011, LB382, § 4; Laws 2011, LB509, § 35; Laws 2013, LB553, § 14.

#### Cross References

For provisions of federal Social Security Act, see Chapter 68, article 6.

**79-9,114 Employees retirement system; federal Social Security Act; agreement; coverage group.**

In the event that an agreement for social security under the provisions of section 218(d)(3) of the federal Social Security Act is made applicable to

services performed by employees in positions covered by the school employees retirement system and to services performed by employees who have elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, to remain under a preexisting system, such agreement shall also be made applicable to services performed by individuals as employees of the school district in positions not so covered, but which are otherwise eligible to the benefits of old age and survivors insurance under the provisions of section 218 of the federal Social Security Act as amended, and such employees shall be included in the coverage group, specified in such agreement.

**Source:** Laws 1955, c. 321, § 8, p. 995; R.S.1943, (1994), § 79-1056.05; Laws 1996, LB 900, § 649.

**79-9,115 Employees retirement fund; created; use.**

All allowances, annuities, or other benefits granted under the Class V School Employees Retirement Act, and all expenses incurred in connection with the administration of the act, except clerical work incurred in connection with maintenance of records and payment of benefits, shall be paid from the retirement fund hereby established. Such clerical work shall be performed by employees of the school district or districts and paid for out of the general fund of the school district or districts.

**Source:** Laws 1951, c. 274, § 27, p. 925; R.S.1943, (1994), § 79-1058; Laws 1996, LB 900, § 650; Laws 1998, LB 497, § 27; Laws 2006, LB 1024, § 70.

**79-9,116 Applicability of sections.**

Sections 79-993 to 79-996 and the changes to sections 79-978, 79-988, 79-991, 79-992, 79-999, and 79-9,105 and to section 79-1057 as such section existed immediately before May 30, 1987, made by Laws 1987, LB 298, shall not apply to employees retiring prior to May 30, 1987.

**Source:** Laws 1987, LB 298, § 11; R.S.1943, (1994), § 79-1060.01; Laws 1996, LB 900, § 651.

**79-9,117 Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.**

(1) The board shall establish a comprehensive preretirement planning program for school employees who are members of the retirement system. 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 years 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 informa-

tion and advice the board deems valuable in assisting employees in the transition from public employment to retirement.

(4) The board shall work with any governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the preretirement planning program.

(5) The costs of the preretirement planning program shall be charged back to the retirement system.

(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 means a day off paid by the employer and does 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 may 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 2011, LB509, § 36; Laws 2013, LB263, § 28.

#### **79-9,118 Participation in retirement system; qualification.**

On and after July 1, 2011, no employee shall be authorized to participate in the retirement system unless the employee (1) is a United States citizen or (2) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

**Source:** Laws 2011, LB509, § 37.

## **ARTICLE 10**

### **SCHOOL TAXATION, FINANCE, AND FACILITIES**

#### **Cross References**

#### **Constitutional provisions:**

- Diversion of education funds, prohibited, see Article VII, section 8, Constitution of Nebraska.
- Early childhood education endowment fund, see Article VII, section 9, Constitution of Nebraska.
- Escheats and forfeitures, see Article VII, section 7, Constitution of Nebraska.
- Fines, penalties, and license money, except overloading of motor vehicles, see Article VII, section 5, Constitution of Nebraska.
- Funds, how invested, see Article VII, section 8, Constitution of Nebraska.
- Gifts to state, not otherwise designated, see Article VII, section 9, Constitution of Nebraska.
- Motor vehicle tax, apportionment, see Article VIII, section 1, Constitution of Nebraska.
- Perpetual funds enumerated, see Article VII, section 7, Constitution of Nebraska.
- Rents from school lands, see Article VII, section 9, Constitution of Nebraska.

#### **Antitrust recovery, distribution, see section 84-212.**

#### **Bids, construction or repair of buildings, see section 73-106.**

#### **Bonds, generally, see Chapter 10.**

#### **Budgets, applicability of Nebraska Budget Act, see section 13-517.**

#### **County school funds:**

- Artisan's lien, excess funds from sale, when, see section 52-604.
- Branded animals, estrays, proceeds of sale, see section 54-415.
- Debts due county, penalty for delinquent payment, see section 23-142.
- Decedents' estates, unclaimed property, see section 23-1815.
- Motor vehicle fuels, unlawful transportation, proceeds of sale of vehicle and fine, see section 66-528 et seq.
- Personal property acquired by Board of Educational Lands and Funds, see section 72-266.
- Witness fees, unclaimed, see section 33-140.01 et seq.

#### **County treasurer, payment of school funds, see section 23-1601.**

#### **Depositories, see Chapter 77, article 23.**

#### **Education Innovation Fund, see section 9-812.**

#### **Eminent domain for pipelines, school lands, see section 57-1105.**

#### **Federal funds, services, and commodities, assistance in securing, see sections 81-910 et seq.**

## SCHOOL TAXATION, FINANCE, AND FACILITIES

**Health and Human Services, Department of**, reimbursement from school districts, see section 83-121.

**Insurance Tax Fund**, distribution, see section 77-913.

**Invention development services claim**, judgment, disbursement, see section 87-607.

**Levy limitations**, see section 77-3442 et seq.

**Local Government Miscellaneous Expenditure Act**, see section 13-2201.

**Medicaid funds**, access for special education, see section 43-2511.

**Motor vehicle taxes**, see section 60-3,184 et seq.

**Nebraska Budget Act**, see section 13-501.

**NIFA funding**, hazard and barrier removal, see section 58-201 et seq.

**Oil and gas leases**, authorization for other than school lands, see section 57-218.

**Permanent school fund**, see section 79-1035.01.

**Reclamation district**, dissolution, distribution of remaining assets, see section 46-541.

**Retirement expenditures**, effect, see section 79-977.

**School District Reimbursement Fund**, see section 83-121.

**School lands and funds**, see Chapter 72.

**Schoolhouses**, contractor, bond, see section 52-118.

**Severance tax**, distribution, see section 57-705.

**Sinking funds:**

Investment in warrants, authorized, see section 77-2338.

Investment of, see section 77-2341.

**State lottery proceeds**, use for educational purposes, see section 9-812.

**Temporary school fund:**

Alcoholic liquor, fees, fines, see sections 53-138.01 and 53-1,104.

Cherry County school land, proceeds of sale and rental, see section 72-267 et seq.

Defined, use, see section 79-1035.02.

Fuels, unlawful sale or transportation, judgment proceeds, see section 66-528 et seq.

Mineral royalties, see section 72-312.

Saline lands, rentals, see section 72-502.

**Uncertificator teacher or administrator employed by district**, school money withheld, see section 79-804.

**Unclaimed property**, proceeds of sale, see section 69-1317.

**Vocational education interdistrict agreement**, tax levy, see section 79-747.

**Warrants**, registered and paid in order, see Chapter 77, article 22.

### (a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

Section

- 79-1001. Act, how cited.
- 79-1002. Legislative intent.
- 79-1003. Terms, defined.
- 79-1003.01. Summer school allowance; summer school student units; calculations.
- 79-1004. Repealed. Laws 1997, LB 806, § 69.
- 79-1005. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1005.01. Tax Commissioner; certify data; department; calculate allocation percentage and local system's allocated income tax funds.
- 79-1005.02. Repealed. Laws 2011, LB 235, § 26.
- 79-1006. Repealed. Laws 1997, LB 806, § 69.
- 79-1007. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1007.01. Repealed. Laws 2011, LB 235, § 26.
- 79-1007.02. Repealed. Laws 2011, LB 235, § 26.
- 79-1007.03. Repealed. Laws 2008, LB 988, § 56.
- 79-1007.04. Elementary class size allowance; calculation.
- 79-1007.05. Focus school and program allowance; calculation.
- 79-1007.06. Poverty allowance; calculation.
- 79-1007.07. Financial reports relating to poverty allowance; department; duties; report; appeal of department decisions.
- 79-1007.08. Limited English proficiency allowance; calculation.
- 79-1007.09. Financial reports relating to limited English proficiency; department; duties; report; appeal of department decisions.
- 79-1007.10. Cost growth factor; computation.
- 79-1007.11. School district formula need; calculation.
- 79-1007.12. Transportation allowance; calculation.
- 79-1007.13. Special receipts allowance; calculation.
- 79-1007.14. Distance education and telecommunications allowance; calculation.
- 79-1007.15. Elementary site allowance; calculation.
- 79-1007.16. Basic funding; calculation.
- 79-1007.17. Local choice adjustment; calculation.
- 79-1007.18. Averaging adjustment; calculation.
- 79-1007.19. Repealed. Laws 2011, LB 235, § 26.

## SCHOOLS

### Section

- 79-1007.20. Student growth adjustment; school district; application; department; powers.
- 79-1007.21. Two-year new school adjustment; school district; application; department; powers.
- 79-1007.22. New learning community transportation adjustment; application; department; powers.
- 79-1007.23. Instructional time allowance; calculation.
- 79-1007.24. Repealed. Laws 2011, LB 235, § 26.
- 79-1007.25. Teacher education allowance; calculation.
- 79-1008. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1008.01. Equalization aid; amount.
- 79-1008.02. Minimum levy adjustment; calculation; effect.
- 79-1009. Option school districts; net option funding; calculation.
- 79-1009.01. Converted contract option students; department; calculations; notice to applicant district.
- 79-1010. Repealed. Laws 2011, LB 8, § 4; Laws 2011, LB 235, § 26.
- 79-1010.01. Repealed. Laws 2003, LB 10, § 1; Laws 2003, LB 67, § 34.
- 79-1011. Support grants for consolidation; qualification; requirements; payment.
- 79-1012. School District Reorganization Fund; created; use; investment.
- 79-1013. Poverty plan; submission required; when; review; approval; elements required; appeal.
- 79-1014. Limited English proficiency plan; submission required; when; review; approval; elements required; appeal.
- 79-1015. Repealed. Laws 2009, LB 545, § 26.
- 79-1015.01. Local system formula resources; local effort rate yield; determination.
- 79-1016. Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.
- 79-1017. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1017.01. Local system formula resources; amounts included.
- 79-1018. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1018.01. Local system formula resources; other actual receipts included.
- 79-1019. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1020. Aid allocation adjustments; department; duties.
- 79-1021. Tax Equity and Educational Opportunities Fund; created; investment.
- 79-1022. Distribution of income tax receipts and state aid; effect on budget.
- 79-1022.01. Repealed. Laws 2001, LB 797, § 55.
- 79-1022.02. School fiscal year 2012-13 certifications null and void.
- 79-1023. School district; general fund budget of expenditures; limitation; department; certification.
- 79-1024. Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect.
- 79-1025. Basic allowable growth rate.
- 79-1026. Repealed. Laws 2011, LB 235, § 26.
- 79-1026.01. Repealed. Laws 2011, LB 235, § 26.
- 79-1027. Budget; restrictions.
- 79-1027.01. Property tax requests exceeding maximum levy; reductions; procedure.
- 79-1028. Repealed. Laws 2011, LB 235, § 26.
- 79-1028.01. School fiscal years; district may exceed certain limits; situations enumerated; state board; duties.
- 79-1028.02. School fiscal years 2009-10 and 2010-11; American Recovery and Reinvestment Act percentage; school district allocation; computation; school district; duties.
- 79-1028.03. Retirement aid; calculation.
- 79-1028.04. School fiscal year 2010-11; federal Education Jobs Fund allocation; computation; school district; duties.
- 79-1029. Budget authority for general fund budget of expenditures; Class II, III, IV, V, or VI district may exceed; procedure.
- 79-1030. Unused budget authority for general fund budget of expenditures; carried forward; limitation.
- 79-1031. Department; annual estimate required.
- 79-1031.01. Appropriations Committee; duties.

## SCHOOL TAXATION, FINANCE, AND FACILITIES

### Section

- 79-1032. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 79-1033. State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments.
- (b) SCHOOL FUNDS
- 79-1034. School funds; collection of fines and other school money; duties of county treasurer.
- 79-1035. School funds; apportionment by Commissioner of Education; basis.
- 79-1035.01. Permanent school fund; use.
- 79-1035.02. Temporary school fund; use.
- 79-1035.03. School lands, defined.
- 79-1036. School funds; public lands; amount in lieu of tax; reappraisal; appeal.
- 79-1037. School funds; distribution; basis.
- 79-1038. School funds; apportionment; formation of new district; when eligible.
- 79-1039. School funds; apportionment; duties.
- 79-1040. School funds; apportionment; county treasurer; no compensation allowed.
- 79-1041. County treasurer; distribute school funds; when.
- 79-1042. School funds; embezzlement by school district treasurer.
- 79-1043. School funds; investment; interest; repurchase agreements; securities; how held.
- 79-1044. Forest reserve funds; distribution for schools and roads; how made.
- 79-1045. Forest reserve funds; apportionment; how made.
- 79-1046. Forest reserve funds; apportionment; certification to districts.
- 79-1047. Public grazing funds; distribution to counties; how made.
- 79-1048. Public grazing funds; distribution.
- 79-1049. Flood control funds; distribution for schools and roads; how made.
- 79-1050. Flood control funds; counties entitled to share.
- 79-1051. Flood control funds; apportionment by Commissioner of Education.
- 79-1052. Flood control funds; apportionment for schools and roads.
- 79-1053. Flood control funds; certification to districts.
- 79-1054. Repealed. Laws 1997, LB 347, § 59.
- 79-1055. Repealed. Laws 1997, LB 347, § 59.
- 79-1056. Repealed. Laws 1997, LB 347, § 59.
- 79-1057. Repealed. Laws 1997, LB 347, § 59.
- 79-1058. Repealed. Laws 1997, LB 347, § 59.
- 79-1059. Repealed. Laws 1997, LB 347, § 59.
- 79-1060. Repealed. Laws 1997, LB 347, § 59.
- 79-1061. Repealed. Laws 1997, LB 347, § 59.
- 79-1062. Federal Mineral Leasing Act funds; disposition.
- 79-1063. State Department of Education Trust Fund; created; use; emergency cash fund; created; investment.
- 79-1064. State Department of Education Cash Fund; created; use; investment.
- 79-1065. Financial support to school districts; adjustments authorized; records.
- 79-1065.01. Financial support to school districts; lump-sum payments.
- 79-1065.02. State aid payments; adjustments; application; calculation.
- 79-1066. School districts; financial support from an entity constructing an electric generating facility; legislative findings.
- 79-1067. School districts; entity constructing electric generating facility; payments authorized; amount.
- 79-1068. School districts; entity constructing electric generating facility; retroactive payments authorized.
- 79-1069. School districts; payments; conditions.
- 79-1070. Power to borrow money; conditions; authorization to accept loans from state or federal government.
- 79-1071. Power to borrow money; how construed.
- 79-1072. Class II, III, IV, V, or VI school district; contingency fund; authorized; use.
- 79-1072.01. Repealed. Laws 2006, LB 764, § 1.
- 79-1072.02. Repealed. Laws 2006, LB 764, § 1.

## SCHOOLS

### Section

- 79-1072.03. Repealed. Referendum 2006, No. 422.  
79-1072.04. Repealed. Referendum 2006, No. 422.

### (c) SCHOOL TAXATION

- 79-1073. General fund property tax receipts; learning community coordinating council; certification; division; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.  
79-1073.01. Learning communities; special building funds; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.  
79-1074. Joint district or learning community; joint affiliated school system or learning community; taxable property; certification.  
79-1075. Joint district or learning community; joint affiliated school system; tax levy; certification.  
79-1076. Repealed. Laws 2001, LB 797, § 55.  
79-1077. Affiliation; tax levy; computation.  
79-1078. Class VI school system tax levy; computation; distribution of proceeds.  
79-1079. City of the metropolitan class; school district boundaries extended; tax levy; effect.  
79-1080. Class IV and V school districts; school tax; how payable.  
79-1081. Class IV school district; school tax; purposes enumerated; tax levy; restriction.  
79-1082. Class V school district; school tax; levy.

### (d) SCHOOL BUDGETS AND ACCOUNTING

- 79-1083. School tax; adopted budget statement; delivery; to whom.  
79-1083.01. Reductions in school district budget; legislative intent.  
79-1083.02. Class I school district; primary high school district; designation; certification.  
79-1083.03. Repealed. Laws 2011, LB 235, § 26.  
79-1084. Class III school district; school board; budget; tax; levy; publication of expenditures; violation; penalty; duty of county board.  
79-1085. Class IV school district; board of education; budget estimate and statement; tax levy; authorized.  
79-1086. Class V school district; board of education; budget; how prepared; certification of levy; levy of taxes.  
79-1087. Class V school district; board of education; bonds; interest and sinking fund; investment.  
79-1088. School districts; uniform system of accounting; duty of State Department of Education to prescribe.  
79-1089. Audit by public accountant or certified public accountant; report; failure to comply; effect.  
79-1090. Failure to approve budget; superintendent of primary high school district; duties.  
79-1091. School district; fiscal year.  
79-1092. Cities changing classification; school funds; to whom payable; how used.  
79-1093. Class III, IV, or V school district; machine accounting and payroll processing; disbursing of funds; board of education; contract.

### (e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

- 79-1094. District maintaining more than one school; closing, when authorized.  
79-1095. Eminent domain; power of district to exercise.  
79-1096. Eminent domain; amount and character of land authorized to be taken; public hearing; notice.  
79-1097. Eminent domain; location upon state school land; authority of district to purchase.  
79-1098. Schoolhouse; erection or improvement; equipment; special tax.  
79-1099. Schoolhouse; erection or improvement; equipment; submission to voters.  
79-10,100. Schoolhouse; erection or improvement; equipment; vote required to approve.

## SCHOOL TAXATION, FINANCE, AND FACILITIES

### Section

- 79-10,101. Schoolhouse; erection or improvement; equipment; tax fund; transfer; limitation upon use; investment.
- 79-10,102. Schoolhouse; where built.
- 79-10,103. Real property; lease or acquisition; located outside of district; purpose; election; when.
- 79-10,104. Real property; acquisition; instructional purposes; construction of buildings; limitation.
- 79-10,105. Lease or lease-purchase agreements; public school district; authorization; restrictions.
- 79-10,106. Schoolhouse; use for public assemblies; rental.
- 79-10,107. School district property; lease authorized.
- 79-10,108. Public parks; conveyance to school districts; when authorized; resolution.
- 79-10,109. Public parks; conveyance to school districts; use.
- 79-10,110. Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose; school board; powers and duties; hearing; tax levy authorized; issuance of bonds authorized.
- 79-10,110.01. Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose bonds; refunding bonds; authorized; conditions.
- 79-10,111. Class I or II school district; schoolhouse; selection or change of site; vote required.
- 79-10,112. Repealed. Laws 1999, LB 272, § 118.
- 79-10,113. Class I school district; property; sale; how conveyed.
- 79-10,114. Class II, III, IV, or VI school district; property; sale; proceeds of sale; use.
- 79-10,115. Class IV or V school district; sale of property; conditions.
- 79-10,116. Class IV or V school district; bonds; purchase before maturity.
- 79-10,117. Class III or VI school district; teacherage; site; purchase or lease; powers of voters at election or annual or special meeting; tax.
- 79-10,118. Class III or VI school district; teacherage; tax; election.
- 79-10,119. Class III, IV, or V school district; real estate for future sites outside district; annexation; effect.
- 79-10,120. Class II, III, IV, V, or VI school district; board of education; special fund for sites and buildings; levy of taxes.
- 79-10,121. Class I school district; schoolhouse; site; facilities; purchase or lease; powers of voters at annual or special meeting; tax.
- 79-10,122. Class I school district; schoolhouse; site; facilities; tax; election; special fund; establish; restriction.
- 79-10,123. Class I school district; schoolhouse; site; facilities; tax; contract; surplus funds.
- 79-10,124. Class I school district; schoolhouse; site; facilities; tax; limitation.
- 79-10,125. Class I school district; schoolhouse; site; facilities; levy; warrants; limitation.
- 79-10,126. Class V school district not member of learning community; school tax; additional levy; funds established.
- 79-10,126.01. Class V school district member of learning community; school tax; additional levy; funds established.
- 79-10,127. Class V school district; sale of site; proceeds; use.
- 79-10,128. Class V school district; sale of site; petition; contents.
- 79-10,129. Class V school district; sale of site; petition; parties to action; summons.
- 79-10,130. Class V school district; sale of site; hearing; decree.
- 79-10,131. Class V school district; sale of site; appraisers; appointment; oath.
- 79-10,132. Class V school district; sale of site; appraisers; compensation; sheriff; notice of sale; publication; fees.
- 79-10,133. Class V school district; sale of site; sheriff; report of sale; confirmation.
- 79-10,134. Class V school district; sale of site; decree; appeal.
- 79-10,135. Class V school district; sale of site; sheriff; disbursement of proceeds; disposition.
- 79-10,136. Class V school district; conveyance of site; conditions; proceeds.

## Section

## (f) SCHOOL BREAKFAST PROGRAM

- 79-10,137. Legislative findings.  
 79-10,138. Program qualifications; reimbursement.  
 79-10,139. Rules and regulations.

## (g) SUMMER FOOD SERVICE PROGRAM

- 79-10,140. Summer Food Service Program; terms, defined.  
 79-10,141. Summer Food Service Program; legislative intent; department; duties; preference for grants; applications.  
 79-10,142. Summer Food Service Program; department; collect data; report.

## (a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

**79-1001 Act, how cited.**

Sections 79-1001 to 79-1033 shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

**Source:** Laws 1990, LB 1059, § 1; Laws 1995, LB 542, § 1; Laws 1995, LB 840, § 3; R.S.Supp., 1995, § 79-3801; Laws 1996, LB 900, § 652; Laws 1996, LB 1050, § 10; Laws 1997, LB 806, § 29; Laws 1998, LB 1134, § 1; Laws 1998, LB 1219, § 13; Laws 1999, LB 149, § 1; Laws 2001, LB 833, § 3; Laws 2002, LB 898, § 2; Laws 2004, LB 1091, § 8; Laws 2006, LB 1024, § 71; Laws 2007, LB641, § 12; Laws 2008, LB988, § 8; Laws 2009, LB545, § 3; Laws 2009, First Spec. Sess., LB5, § 2; Laws 2011, LB18, § 1; Laws 2011, LB235, § 4.

**79-1002 Legislative intent.**

It is the intent, purpose, and goal of the Legislature to create a system of financing the public school system which will:

(1) Provide state support from all sources of state funding sufficient to support the statewide aggregate general fund operating expenditures for Nebraska elementary and secondary public education that cannot be met by local resources;

(2) Reduce the reliance on the property tax for the support of the public school system;

(3) Broaden financial support for the public school system by dedicating a portion of the revenue received from the state income tax for support of the system;

(4) Keep pace with the increasing cost of operating the public school system;

(5) Assure a foundation support level for the operation of the public school system, taking local resources into consideration;

(6) Recognize a portion of the costs of programs to address the unique educational needs of students who are in poverty or who have limited English proficiency as being specific to the local system providing such programs;

(7) Create a process to collect information regarding the programs and the cost of the programs provided to address the unique educational needs of students who are in poverty or who have limited English proficiency in order to analyze which programs may be appropriate to receive state support and to analyze the poverty and limited English proficiency allowances;

(8) Assure a greater level of equity of educational opportunities for all public school students;

(9) Assure a greater level of equity in property tax rates for the support of the public school system; and

(10) Assure measured growth in the state aid appropriation through the continuation of limits on the growth of general fund budgets of districts.

**Source:** Laws 1990, LB 1059, § 2; R.S.1943, (1994), § 79-3802; Laws 1996, LB 900, § 653; Laws 1996, LB 1050, § 11; Laws 1997, LB 806, § 30; Laws 2006, LB 1024, § 72.

**79-1003 Terms, defined.**

For purposes of the Tax Equity and Educational Opportunities Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years 2013-14 through 2015-16, the difference of the general fund operating expenditures as calculated pursuant to subdivision (22) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance, and (b) for school fiscal year 2016-17 and each school fiscal year thereafter, the difference of the general fund operating expenditures as calculated pursuant to subdivision (22) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 as adjusted by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(5) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(6) Board means the school board of each school district;

(7) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund. Categorical funds does not include funds received pursuant to section 79-1028.02 or 79-1028.04;

(8) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(9) Converted contract means an expired contract that was in effect for at least fifteen school years beginning prior to school year 2012-13 for the education of students in a nonresident district in exchange for tuition from the resident district when the expiration of such contract results in the nonresident district educating students, who would have been covered by the contract if the contract were still in effect, as option students pursuant to the enrollment option program established in section 79-234;

(10) Converted contract option student means a student who will be an option student pursuant to the enrollment option program established in section 79-234 for the school fiscal year for which aid is being calculated and who would have been covered by a converted contract if the contract were still in effect and such school fiscal year is the first school fiscal year for which such contract is not in effect;

(11) Department means the State Department of Education;

(12) District means any Class I, II, III, IV, V, or VI school district and, beginning with the calculation of state aid for school fiscal year 2011-12 and each school fiscal year thereafter, a unified system as defined in section 79-4,108;

(13) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(14) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23, 79-1007.25, 79-1008.01 to 79-1022, 79-1022.02, 79-1028.02, and 79-1028.04;

(15) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(16) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(17) Formula students means:

(a) For state aid certified pursuant to section 79-1022, the sum of the product of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and the prior two school fiscal years plus sixty percent of the qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which aid is to be paid minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the fall membership multiplied by 0.5; and

(b) For the final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus sixty percent of the qualified early childhood education average daily membership plus tuitioned students minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the average daily membership multiplied by 0.5 from the school fiscal year immediately preceding the school fiscal year in which aid was paid;

(18) Free lunch and free milk student means a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(19) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(20) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023 and the calculation pursuant to subdivision (2) of section 79-1027.01, the general fund budget of expenditures does not include any special grant funds, exclusive of local matching funds, received by a district;

(21) General fund expenditures means all expenditures from the general fund;

(22) General fund operating expenditures means for state aid calculated for school fiscal years 2012-13 and each school fiscal year thereafter, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (a) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (b) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (c) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (d) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (e) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year, or, to the extent that a district has demonstrated to the State Board of Education pursuant to section 79-1028.01 that the agreement will result in a net savings in salary and benefit costs to the school district over a five-year period, occurring on or after the first day of the 2013-14 school year, (f)(i) expenditures to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of

Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (ii) expenditures to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent, and (g) any amounts paid by the district for lobbyist fees and expenses reported to the Clerk of the Legislature pursuant to section 49-1483.

For purposes of this subdivision (22) of this section, receipts from levy override elections shall equal ninety-nine percent of the difference of the total general fund levy minus a levy of one dollar and five cents per one hundred dollars of taxable valuation multiplied by the assessed valuation for school districts that have voted pursuant to section 77-3444 to override the maximum levy provided pursuant to section 77-3442;

(23) High school district means a school district providing instruction in at least grades nine through twelve;

(24) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(25) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(26) Limited English proficiency students means the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid plus the difference of such students with limited English proficiency minus the average number of limited English proficiency students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(27) Local system means a learning community for purposes of calculation of state aid for the second full school fiscal year after becoming a learning community and each school fiscal year thereafter, a unified system, a Class VI district and the associated Class I districts, or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts. The membership, expenditures, and resources of Class I districts that are affiliated with multiple high school districts will be attributed to local systems based on the percent of the Class I valuation that is affiliated with each high school district;

(28) Low-income child means a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(29) Low-income students means the number of low-income children within the district multiplied by the ratio of the formula students in the district divided by the total children under nineteen years of age residing in the district as derived from income tax information;

(30) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(31) Poverty students means the number of low-income students or the number of students who are free lunch and free milk students in a district plus the difference of the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, minus the average number of poverty students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(32) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(33) Qualified early childhood education fall membership means the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(34) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(35) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(36) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(37) Sparse local system means a local system that is not a very sparse local system but which meets the following criteria:

(a)(i) Less than two students per square mile in the county in which each high school is located, based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(c)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than two hundred seventy-five square miles in the local system; or

(d)(i) Less than two formula students per square mile in the local system and (ii) the local system includes an area equal to ninety-five percent or more of the square miles in the largest county in which a high school attendance center is located in the local system;

(38) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(39) Special grant funds means the budgeted receipts for grants, including, but not limited to, categorical funds, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(40) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(41) State board means the State Board of Education;

(42) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(43) Statewide average basic funding per formula student means the statewide total basic funding for all districts divided by the statewide total formula students for all districts;

(44) Statewide average general fund operating expenditures per formula student means the statewide total general fund operating expenditures for all districts divided by the statewide total formula students for all districts;

(45) Teacher has the definition found in section 79-101;

(46) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(47) Tuition receipts from converted contracts means tuition receipts received by a district from another district in the most recently available complete data year pursuant to a converted contract prior to the expiration of the contract;

(48) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency; and

(49) Very sparse local system means a local system that has:

(a)(i) Less than one-half student per square mile in each county in which each high school attendance center is located based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads; or

(b)(i) More than four hundred fifty square miles in the local system, (ii) less than one-half student per square mile in the local system, and (iii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads.

**Source:** Laws 1990, LB 1059, § 3; Laws 1991, LB 511, § 71; Laws 1992, LB 245, § 76; Laws 1994, LB 1290, § 3; Laws 1995, LB 840, § 4; R.S.Supp.,1995, § 79-3803; Laws 1996, LB 900, § 654; Laws 1996, LB 1050, § 12; Laws 1997, LB 347, § 29; Laws 1997, LB 710, § 5; Laws 1997, LB 713, § 1; Laws 1997, LB 806, § 31; Laws 1998, LB 306, § 42; Laws 1998, LB 1134, § 2; Laws 1998, LB 1219, § 15; Laws 1998, LB 1229, § 3; Laws 1998, Spec. Sess., LB 1, § 15; Laws 1999, LB 149, § 3; Laws 1999, LB 813, § 19; Laws 2001, LB 313, § 1; Laws 2001, LB 797, § 18; Laws 2001, LB 833, § 4; Laws 2002, LB 898, § 3; Laws 2005, LB 126, § 45; Laws 2005, LB 577, § 1; Laws 2006, LB 1024, § 73; Laws 2006, LB 1208, § 4; Referendum 2006, No. 422; Laws 2007, LB641, § 13; Laws 2008, LB988, § 9; Laws 2009, LB545, § 4; Laws 2009, LB549, § 26; Laws 2009, First Spec. Sess., LB5, § 3; Laws 2010, LB1071, § 12; Laws 2011, LB18, § 2; Laws 2011, LB235, § 5; Laws 2011, LB382, § 5; Laws 2011, LB509, § 38; Laws 2013, LB407, § 2; Laws 2013, LB553, § 15; Laws 2014, LB967, § 11.

Effective date April 3, 2014.

#### Cross References

Class V School Employees Retirement Act, see section 79-978.01.

Nebraska Budget Act, see section 13-501.

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

### **79-1003.01 Summer school allowance; summer school student units; calculations.**

(1) The department shall calculate a summer school allowance for each district which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. For aid calculated for school fiscal years through school fiscal year 2013-14, the summer school allowance shall be equal to two and one-half percent of the summer school student units for such district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student. For aid calculated for school fiscal year 2014-15 and each school fiscal year thereafter, the summer school allowance shall be equal to the lesser of two and one-half percent of the product of the summer school student units for such district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student or the summer school and early childhood summer school expenditures that are paid for with noncategorical funds generated by state or local taxes as reported on the annual financial

report for the most recently available data year and that are not included in other allowances.

(2) Summer school student units shall be calculated for each student enrolled in summer school as defined in section 79-536 in a school district who attends such summer school for at least twelve days in the most recently available complete data year, whether or not the student is in the membership of the school district. The initial number of units for each such student shall equal the sum of the ratios, each rounded down to the nearest whole number, of the number of days for which the student attended summer school classes in such district for at least three hours and less than six hours per day divided by twelve days and of two times the number of days for which the student attended summer school classes in such district for six or more hours per day divided by twelve days.

(3) Each school district shall receive an additional summer school student unit for each summer school student unit attributed to remedial math or reading programs. Each school district shall also receive an additional summer school student unit for each summer school student unit attributed to a free lunch and free milk student.

(4) Beginning with state aid calculated for school fiscal year 2012-13, summer school student units shall be calculated for each student who was both enrolled in the most recently available complete data year in a summer session of an early childhood education program for which a qualified early childhood education fall membership greater than zero has been calculated for the school fiscal year for which aid is being calculated and eligible to attend kindergarten in the fall immediately following such summer session. The initial number of units for each such early childhood education student shall equal the sum of the ratios, each rounded down to the nearest whole number, of the number of days for which the student attended the summer session in such district for at least three hours and less than six hours per day divided by twelve days and of two times the number of days for which the student attended the summer session in such district for six or more hours per day divided by twelve days. The initial summer school student units for early childhood education students shall be multiplied by six-tenths. Instructional hours included in the calculation of the qualified early childhood education fall membership or the qualified early childhood education average daily membership shall not be included in the calculation of the summer school allowance.

(5) Each school district shall receive an additional six-tenths of a summer school student unit for each early childhood education student unit attributed to a free lunch and free milk early childhood education student.

(6) This section does not prevent school districts from requiring and collecting fees for summer school or summer sessions of early childhood education programs, except that summer school student units shall not be calculated for school districts which collect fees for summer school from students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs.

**Source:** Laws 2007, LB641, § 14; Laws 2008, LB988, § 10; Laws 2010, LB1071, § 13; Laws 2011, LB235, § 6; Laws 2013, LB407, § 3.

**79-1004 Repealed. Laws 1997, LB 806, § 69.**

**79-1005 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.****79-1005.01 Tax Commissioner; certify data; department; calculate allocation percentage and local system's allocated income tax funds.**

(1) An amount equal to the amount appropriated to the School District Income Tax Fund for distribution in school fiscal year 1992-93 shall be disbursed as option payments as determined under section 79-1009 and as allocated income tax funds as determined in this section and sections 79-1008.01, 79-1015.01, 79-1017.01, and 79-1018.01, except as provided in section 79-1008.02. Funds not distributed as allocated income tax funds due to minimum levy adjustments shall not increase the amount available to local systems for distribution as allocated income tax funds.

(2) Not later than November 15 of each year, the Tax Commissioner shall certify to the department for the preceding tax year the income tax liability of resident individuals for each local system. The 1996 income tax liability of resident individuals of Class I districts that are affiliated with multiple high school districts shall be divided between local systems based on the percentage of the Class I district's valuation affiliated with each high school district.

(3) Using the data certified by the Tax Commissioner pursuant to subsection (2) of this section, the department shall calculate the allocation percentage and each local system's allocated income tax funds. The allocation percentage shall be an amount equal to the amount appropriated to the School District Income Tax Fund for distribution in school fiscal year 1992-93 minus the total amount paid for option students pursuant to section 79-1009 and (a) for aid calculated for school fiscal year 2010-11, minus twenty million dollars and (b) for aid calculated for school fiscal years 2011-12 and 2012-13, minus twenty-one million dollars with the difference divided by the aggregate statewide income tax liability of all resident individuals certified pursuant to subsection (2) of this section. Each local system's allocated income tax funds shall be calculated by multiplying the allocation percentage times the local system's income tax liability certified pursuant to subsection (2) of this section.

**Source:** Laws 1997, LB 806, § 33; Laws 1998, Spec. Sess., LB 1, § 16; Laws 1999, LB 149, § 4; Laws 2002, LB 898, § 4; Laws 2004, LB 1093, § 2; Laws 2008, LB988, § 11; Laws 2009, First Spec. Sess., LB5, § 4; Laws 2011, LB235, § 7.

**79-1005.02 Repealed. Laws 2011, LB 235, § 26.****79-1006 Repealed. Laws 1997, LB 806, § 69.****79-1007 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.****79-1007.01 Repealed. Laws 2011, LB 235, § 26.****79-1007.02 Repealed. Laws 2011, LB 235, § 26.****79-1007.03 Repealed. Laws 2008, LB 988, § 56.****79-1007.04 Elementary class size allowance; calculation.**

(1) For school fiscal years 2008-09 through 2012-13, the department shall determine the elementary class size allowance for each school district from information submitted by a school district on a form prescribed by the depart-

ment on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated.

(2) For school fiscal year 2008-09, the allowance shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.20 then multiplied by the number of students in the school district in kindergarten through grade eight who qualify for free or reduced-price lunches and who spend at least fifty percent of the school day in a classroom with a minimum of ten students and a maximum of twenty students as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid.

(3) For school fiscal years 2009-10 through 2012-13, the allowance shall equal the statewide average general fund operating expenditures per formula student multiplied by twenty percent of the number of students in the school district in kindergarten through grade three who spend at least fifty percent of the school day in one or more classrooms with a minimum of ten students and a maximum of twenty students as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid for state aid certified pursuant to section 79-1022 and as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid for the final calculation of state aid pursuant to section 79-1065.

**Source:** Laws 2006, LB 1024, § 77; Laws 2007, LB641, § 17; Laws 2008, LB988, § 27; Laws 2010, LB1071, § 14.

#### **79-1007.05 Focus school and program allowance; calculation.**

For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the focus school and program allowance for each school district in a learning community which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. Such form may require confirmation from a learning community official that the focus school or program has been approved by the learning community coordinating council for the school fiscal year for which the allowance is being calculated. The focus school and program allowance for each school district in a learning community shall equal the sum of the allowances calculated pursuant to this section for each focus school and focus program operated by the school district for the school fiscal year for which aid is being calculated.

For the school fiscal year containing the majority of the first school year that a school or program will be in operation as a focus school or program approved by the learning community and meeting the requirements of section 79-769, the focus school and program allowance for such focus school or program shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by the estimated number of students who will be participating in the focus school or program as reported on the form required pursuant to this section.

For the school fiscal year containing the majority of the second school year that a school or program will be in operation as a focus school or program approved by the learning community and meeting the requirements of section 79-769, the focus school and program allowance for such focus school or

program shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by (1) for state aid certified pursuant to section 79-1022, the difference of the product of two multiplied by the number of students participating in the focus school or program as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid minus the estimated number of students used in the certification of state aid pursuant to section 79-1022 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and (2) for the final calculation of state aid pursuant to section 79-1065, the difference of the product of two multiplied by the number of students participating in the focus school or program as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid minus the estimated number of students used in the final calculation of state aid pursuant to section 79-1065 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid.

For the school fiscal year containing the majority of the third school year that a school or program will be in operation as a focus school or program approved by the learning community and meeting the requirements of section 79-769 and each school fiscal year thereafter, the focus school and program allowance for such focus school or program shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by the number of students participating in the focus school or program as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid for state aid certified pursuant to section 79-1022 and as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid for the final calculation of state aid pursuant to section 79-1065.

**Source:** Laws 2006, LB 1024, § 78; Laws 2007, LB641, § 18; Laws 2010, LB1070, § 7; Laws 2010, LB1071, § 15.

**79-1007.06 Poverty allowance; calculation.**

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the poverty allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.07. Each school district shall designate a maximum poverty allowance on a form prescribed by the department on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the poverty allowance by providing the department with a maximum poverty allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan pursuant to section 79-1013.

(2) The poverty allowance for each school district that has not been disqualified pursuant to section 79-1007.07 shall equal the lesser of:

(a) The maximum amount designated pursuant to subsection (1) of this section by the school district in the local system, if such school district

designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The sum of:

(i) The statewide average general fund operating expenditures per formula student multiplied by 0.0375 then multiplied by the poverty students comprising more than five percent and not more than ten percent of the formula students in the school district; plus

(ii) The statewide average general fund operating expenditures per formula student multiplied by 0.0750 then multiplied by the poverty students comprising more than ten percent and not more than fifteen percent of the formula students in the school district; plus

(iii) The statewide average general fund operating expenditures per formula student multiplied by 0.1125 then multiplied by the poverty students comprising more than fifteen percent and not more than twenty percent of the formula students in the school district; plus

(iv) The statewide average general fund operating expenditures per formula student multiplied by 0.1500 then multiplied by the poverty students comprising more than twenty percent and not more than twenty-five percent of the formula students in the school district; plus

(v) The statewide average general fund operating expenditures per formula student multiplied by 0.1875 then multiplied by the poverty students comprising more than twenty-five percent and not more than thirty percent of the formula students in the school district; plus

(vi) The statewide average general fund operating expenditures per formula student multiplied by 0.2250 then multiplied by the poverty students comprising more than thirty percent of the formula students in the school district.

**Source:** Laws 2006, LB 1024, § 79; Laws 2007, LB641, § 19; Laws 2008, LB988, § 28; Laws 2009, LB549, § 27.

**79-1007.07 Financial reports relating to poverty allowance; department; duties; report; appeal of department decisions.**

(1)(a) The annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the poverty allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on poverty as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the poverty plan submitted pursuant to section 79-1013 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's poverty plan; and

(v) An explanation of how any required elements of the poverty plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(2) The department shall determine the poverty allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would include in the poverty allowance expenditures only those expenditures that are not included in other allowances, that were used to specifically address issues related to the education of students living in poverty or to the implementation of the poverty plan, that do not replace expenditures that would have occurred if the students involved in the program did not live in poverty, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 or the federal Education Jobs Fund created pursuant to Public Law 111-226. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in poverty allowance expenditures.

(3) If the poverty allowance expenditures do not equal 117.65 percent or more of the poverty allowance for the most recently available complete data year, the department shall calculate a poverty allowance correction. The poverty allowance correction shall equal the poverty allowance minus eighty-five percent of the poverty allowance expenditures. If the poverty allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(4) If the department determines that the school district did not meet the required elements of the poverty plan for the most recently available complete data year, the department shall calculate a poverty allowance correction equal to fifty percent of the poverty allowance for such school fiscal year and the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated. Any poverty allowance correction calculated pursuant to this subsection shall be added to any poverty allowance correction calculated pursuant to subsection (3) of this section to arrive at the total poverty allowance correction.

(5) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(6) The department shall provide electronically an annual report to the Legislature containing a general description of the expenditures and funding sources for programs related to poverty statewide and specific descriptions of the expenditures and funding sources for programs related to poverty for each school district.

(7) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

**Source:** Laws 2006, LB 1024, § 80; Laws 2007, LB641, § 20; Laws 2008, LB988, § 29; Laws 2009, LB545, § 5; Laws 2011, LB18, § 3; Laws 2012, LB782, § 158; Laws 2013, LB407, § 4.

**79-1007.08 Limited English proficiency allowance; calculation.**

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the limited English proficiency allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.09. Each school district shall designate a maximum limited English proficiency allowance on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the limited English proficiency allowance by providing the department with a maximum limited English proficiency allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan pursuant to section 79-1014.

(2) The limited English proficiency allowance for each school district that has not been disqualified pursuant to section 79-1007.09 shall equal the lesser of:

(a) The amount designated pursuant to subsection (1) of this section by the school district, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The statewide average general fund operating expenditures per formula student multiplied by 0.25 then multiplied by:

(i) The number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, if such number is greater than or equal to twelve;

(ii) Twelve, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is greater than or equal to one and less than twelve; or

(iii) Zero, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is less than one.

**Source:** Laws 2006, LB 1024, § 81; Laws 2007, LB641, § 21; Laws 2008, LB988, § 30; Laws 2009, LB549, § 28.

**79-1007.09 Financial reports relating to limited English proficiency; department; duties; report; appeal of department decisions.**

(1)(a) The annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the limited English proficiency allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the limited English proficiency plan submitted pursuant to section 79-1014 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's limited English proficiency plan; and

(v) An explanation of how any required elements of the limited English proficiency plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(2) The department shall determine the limited English proficiency allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would only include in the limited English proficiency allowance expenditures those expenditures that are not included in other allowances, that were used to specifically address issues related to the education of students with limited English proficiency or to the implementation of the limited English proficiency plan, that do not replace expenditures that would have occurred if the students involved in the program did not have limited English proficiency, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 or the federal Education Jobs Fund created pursuant to Public Law 111-226. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in limited English proficiency allowance expenditures.

(3) If the limited English proficiency allowance expenditures do not equal 117.65 percent or more of the limited English proficiency allowance for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction. The limited English proficiency allowance correction shall equal the limited English proficiency allowance minus eighty-five percent of the limited English proficiency allowance expenditures. If the limited English proficiency allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(4) If the department determines that the school district did not meet the required elements of the limited English proficiency plan for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction equal to fifty percent of the limited English proficiency allowance for such school fiscal year and the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated. Any limited English proficiency allowance correction calculated pursuant to this subsection shall be added to any limited English proficiency allowance correction calculated pursuant to subsection (3) of this section to arrive at the total limited English proficiency allowance correction.

(5) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(6) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to limited English proficiency statewide and specific descriptions of the expenditures and funding sources for programs related to limited English proficiency for each school district.

(7) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

**Source:** Laws 2006, LB 1024, § 82; Laws 2007, LB641, § 22; Laws 2008, LB988, § 31; Laws 2009, LB545, § 6; Laws 2011, LB18, § 4; Laws 2013, LB407, § 5.

#### **79-1007.10 Cost growth factor; computation.**

(1) For state aid calculated for all school fiscal years except school fiscal year 2010-11, the cost growth factor shall equal the sum of: (a) The basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (b) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed.

(2) For state aid calculated for school fiscal year 2010-11, the cost growth factor shall equal the sum of: (i) One; plus (ii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (iii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (iv) two percent.

**Source:** Laws 2006, LB 1024, § 83; Laws 2007, LB21, § 2; Laws 2008, LB988, § 32; Laws 2009, LB545, § 7; Laws 2011, LB235, § 8.

#### **79-1007.11 School district formula need; calculation.**

(1) Except as otherwise provided in this section, for school fiscal years 2013-14 through 2015-16, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, teacher education allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(2) Except as otherwise provided in this section, for school fiscal year 2016-17 and each school fiscal year thereafter, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of

the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(3) If the formula need calculated for a school district pursuant to subsections (1) and (2) of this section is less than one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(4) Except as provided in subsection (6) of this section, if the formula need calculated for a school district pursuant to subsections (1) and (2) of this section is more than one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, except that the formula need shall not be reduced pursuant to this subsection for any district receiving a student growth adjustment for the school fiscal year for which aid is being calculated.

(5) For purposes of subsections (3) and (4) of this section, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be the formula need used in the final calculation of aid pursuant to section 79-1065 and for districts that were affected by a reorganization with an effective date in the calendar year preceding the calendar year in which aid is certified for the school fiscal year for which aid is being calculated, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be attributed to the affected school districts based on information provided to the department by the school districts or proportionally based on the adjusted valuation transferred if sufficient information has not been provided to the department.

(6) For state aid calculated for the first full school fiscal year of a new learning community, if the formula need calculated for a member school district pursuant to subsections (1) through (3) of this section is less than the sum of the school district's state aid certified for the school fiscal year immediately preceding the first full school fiscal year of the learning community plus the school district's other actual receipts included in local system formula resources pursuant to section 79-1018.01 for such school fiscal year plus the product of the school district's general fund levy for such school fiscal year up to one dollar and five cents multiplied by the school district's assessed valuation for such school fiscal year, the formula need for such school district for the school fiscal year for which aid is being calculated shall equal such sum.

**Source:** Laws 2008, LB988, § 13; Laws 2008, LB1153, § 7; Laws 2009, LB545, § 8; Laws 2009, First Spec. Sess., LB5, § 5; Laws 2011, LB235, § 9; Laws 2013, LB407, § 6; Laws 2014, LB967, § 12. Effective date April 3, 2014.

#### **79-1007.12 Transportation allowance; calculation.**

The department shall calculate a transportation allowance for each district equal to the lesser of:

(1) Each local system's general fund expenditures for regular route transportation and in lieu of transportation expenditures pursuant to section 79-611 in the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, but not including special education transportation expenditures or other expenditures previously excluded from general fund operating expenditures; or

(2) The number of miles traveled in the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid by vehicles owned, leased, or contracted by the district or the districts in the local system for the purpose of regular route transportation multiplied by four hundred percent of the mileage rate established by the Department of Administrative Services pursuant to section 81-1176 as of January 1 of the most recently available complete data year added to in lieu of transportation expenditures pursuant to section 79-611 from the same data year.

**Source:** Laws 2008, LB988, § 14.

#### **79-1007.13 Special receipts allowance; calculation.**

The department shall calculate a special receipts allowance for each district equal to the amount of special education, state ward, and accelerated or differentiated curriculum program receipts included in local system formula resources under subdivisions (7), (8), (16), and (17) of section 79-1018.01 attributable to the school district.

**Source:** Laws 2008, LB988, § 15.

#### **79-1007.14 Distance education and telecommunications allowance; calculation.**

The department shall calculate a distance education and telecommunications allowance for each school district equal to eighty-five percent of the difference of the costs for (1) telecommunications services, (2) access to data transmission networks that transmit data to and from the school district, and (3) the transmission of data on such networks paid by the school districts in the local system as reported on the annual financial report for the most recently available complete data year minus the receipts 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, 2008, for the school districts in the local system as reported on the annual financial report for the most recently available complete data year.

**Source:** Laws 2008, LB988, § 16.

#### **79-1007.15 Elementary site allowance; calculation.**

(1) For school fiscal year 2008-09, the department shall calculate an elementary site allowance for any district in which (a) the district has more than one elementary attendance site, (b) at least one of the elementary attendance sites does not offer any other grades, (c) the square miles in the district divided by the number of elementary attendance sites in the district equals one hundred square miles or more per elementary attendance site, and (d) the fall membership in elementary site grades in the district divided by the number of elementary site grades then divided again by the number of elementary attendance sites equals fifteen or fewer students per grade per elementary attendance site. Qualifying elementary attendance sites for such districts shall only offer ele-

mentary site grades and shall have an average of fifteen or fewer students per grade in the fall membership.

(2) For school fiscal year 2009-10 and each school fiscal year thereafter, the department shall calculate an elementary site allowance for any district which has at least one qualifying elementary attendance site and which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. A qualifying elementary attendance site shall be an elementary attendance site, in a district with multiple elementary attendance sites, which does not have another elementary attendance site within seven miles in the same school district or which is the only public elementary attendance site located in an incorporated city or village.

(3) The elementary site allowance for each qualifying district shall equal the sum of the elementary site allowances for each qualifying elementary attendance site in the district. The elementary site allowance for each qualifying elementary attendance site shall equal five hundred percent of the statewide average general fund operating expenditures per formula student multiplied by the result of rounding the ratio of the fall membership attributed to the elementary attendance site divided by eight up to the next whole number if the result was not a whole number, except that if the resulting whole number is greater than the number of elementary site grades, the whole number shall be reduced to equal the number of elementary site grades.

(4) For purposes of this section:

(a) Each district shall determine which grades are considered elementary site grades, except that (i) all grades designated as elementary site grades shall be offered in each elementary attendance site in the district, without any preference indicated by the school board or any school district administrator for students to attend different elementary attendance sites depending on their elementary site grade level, for the school fiscal year for which aid is being calculated and for each of the five school fiscal years preceding the school fiscal year for which aid is being calculated and (ii) elementary site grades shall not include grades nine, ten, eleven, or twelve;

(b) An elementary attendance site is an attendance site in which elementary site grades are offered;

(c) The primary elementary site shall be the elementary attendance site to which the most formula students are attributed in the district and shall not be a qualifying elementary attendance site; and

(d) Fall membership means the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(5) If the elementary attendance site is new or is being reopened after being closed for at least one school year, the requirements of subdivision (4)(a)(i) of this section with respect to preceding school fiscal years shall not apply to school fiscal years in which the elementary attendance site was not in operation.

(6) The department shall determine if the qualifications for the elementary site allowance have been met for each elementary attendance site for which information has been submitted. The department may rely on the information submitted and any other information available to the department, including, but not limited to, past attendance patterns. The state board shall establish a

procedure for appeal of decisions of the department to the state board for a final determination.

**Source:** Laws 2008, LB988, § 17; Laws 2009, First Spec. Sess., LB5, § 6.

**79-1007.16 Basic funding; calculation.**

(1) The department shall calculate basic funding for each district as provided in this section.

(2) For state aid calculated for school fiscal years prior to school fiscal year 2011-12:

(a) A comparison group shall be established for each district consisting of the districts for which basic funding is being calculated, the five larger districts that are closest in size to the district for which basic funding is being calculated as measured by formula students, and the five smaller districts that are closest in size to the district for which basic funding is being calculated as measured by formula students. If there are not five districts that are larger than the district for which basic funding is being calculated or if there are not five districts that are smaller than the district for which basic funding is being calculated, the comparison group shall consist of only as many districts as fit the criteria. If more than one district has exactly the same number of formula students as the largest or smallest district in the comparison group, all of the districts with exactly the same number of formula students as the largest or smallest districts in the comparison group shall be included in the comparison group. If one or more districts have exactly the same number of formula students as the district for which basic funding is being calculated, all such districts shall be included in the comparison group in addition to the five larger districts and the five smaller districts. The comparison group shall remain the same for the final calculation of aid pursuant to section 79-1065;

(b) For districts with nine hundred or more formula students, basic funding shall equal the formula students multiplied by the average of the adjusted general fund operating expenditures per formula student for each district in the comparison group, excluding both the district with the highest adjusted general fund operating expenditures per formula student and the district with the lowest adjusted general fund operating expenditures per formula student of the districts in the comparison group; and

(c) For districts with fewer than nine hundred formula students, basic funding shall equal the product of the average of the adjusted general fund operating expenditures for each district in the comparison group, excluding both the district with the highest adjusted general fund operating expenditures and the district with the lowest adjusted general fund operating expenditures of the districts in the comparison group.

(3) For state aid calculated for school fiscal year 2011-12 and each school fiscal year thereafter:

(a) A comparison group shall be established for each district consisting of the districts for which basic funding is being calculated, the ten larger districts that are closest in size to the district for which basic funding is being calculated as measured by formula students, and the ten smaller districts that are closest in size to the district for which basic funding is being calculated as measured by formula students. If there are not ten districts that are larger than the district for which basic funding is being calculated or if there are not ten districts that

are smaller than the district for which basic funding is being calculated, the comparison group shall consist of only as many districts as fit the criteria. If more than one district has exactly the same number of formula students as the largest or smallest district in the comparison group, all of the districts with exactly the same number of formula students as the largest or smallest districts in the comparison group shall be included in the comparison group. If one or more districts have exactly the same number of formula students as the district for which basic funding is being calculated, all such districts shall be included in the comparison group in addition to the ten larger districts and the ten smaller districts. The comparison group shall remain the same for the final calculation of aid pursuant to section 79-1065;

(b) For districts with nine hundred or more formula students, basic funding shall equal the formula students multiplied by the average of the adjusted general fund operating expenditures per formula student for each district in the comparison group, excluding both the two districts with the highest adjusted general fund operating expenditures per formula student and the two districts with the lowest adjusted general fund operating expenditures per formula student of the districts in the comparison group; and

(c) For districts with fewer than nine hundred formula students, basic funding shall equal the product of the average of the adjusted general fund operating expenditures for each district in the comparison group, excluding both the two districts with the highest adjusted general fund operating expenditures and the two districts with the lowest adjusted general fund operating expenditures of the districts in the comparison group.

**Source:** Laws 2008, LB988, § 18; Laws 2009, LB549, § 29; Laws 2011, LB235, § 10.

#### **79-1007.17 Local choice adjustment; calculation.**

For school fiscal years through school fiscal year 2012-13, the department shall calculate a local choice adjustment for each district that:

- (1) Has fewer than three hundred ninety formula students;
- (2) Is not in a sparse local system or a very sparse local system; and
- (3) Did not receive federal funds in excess of twenty-five percent of its general fund budget of expenditures in the most recently available complete data year or in either of the two school fiscal years preceding the most recently available complete data year.

The local choice adjustment for each such district shall equal fifty percent of the difference between the basic funding per formula student for the district for which the local choice adjustment is being calculated and the basic funding per formula student for the district that has the closest to three hundred ninety formula students multiplied by the formula students for the district for which the local choice adjustment is being calculated, except that the local choice adjustment shall equal zero if the basic funding per formula student for the district for which the local choice adjustment is being calculated is less than the basic funding per formula student for the district that has the closest to three hundred ninety formula students. If more than one district has the closest to three hundred ninety formula students, the basic funding representing the district that has the closest to three hundred ninety formula students shall equal the average of the basic funding per formula student for each such district. The

closest to three hundred ninety formula students shall be measured using the absolute value of the difference of three hundred ninety students minus the district formula students with the difference rounded to the nearest whole number.

**Source:** Laws 2008, LB988, § 19; Laws 2013, LB407, § 7.

**79-1007.18 Averaging adjustment; calculation.**

(1) The department shall calculate an averaging adjustment for districts if the basic funding per formula student is less than the averaging adjustment threshold and the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated was at least one dollar per one hundred dollars of taxable valuation. For school districts that are members of a learning community, the general fund levy for purposes of this section includes both the common general fund levy and the school district general fund levy authorized pursuant to subdivisions (2)(b) and (2)(c) of section 77-3442. The averaging adjustment shall equal the district's formula students multiplied by the percentage specified in this section for such district of the difference between the averaging adjustment threshold minus such district's basic funding per formula student.

(2)(a) For school fiscal years 2012-13 and 2013-14, the averaging adjustment threshold shall equal the lesser of (i) the averaging adjustment threshold for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated increased by the basic allowable growth rate or (ii) the statewide average basic funding per formula student for the school fiscal year for which aid is being calculated.

(b) For school fiscal year 2014-15 and each school fiscal year thereafter, the averaging adjustment threshold shall equal the aggregate basic funding for all districts with nine hundred or more formula students divided by the aggregate formula students for all districts with nine hundred or more formula students for the school fiscal year for which aid is being calculated.

(3) The percentage to be used in the calculation of an averaging adjustment shall be based on the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(4) The percentages to be used in the calculation of averaging adjustments shall be as follows:

(a) If such levy was at least one dollar per one hundred dollars of taxable valuation but less than one dollar and one cent per one hundred dollars of taxable valuation, the percentage shall be fifty percent;

(b) If such levy was at least one dollar and one cent per one hundred dollars of taxable valuation but less than one dollar and two cents per one hundred dollars of taxable valuation, the percentage shall be sixty percent;

(c) If such levy was at least one dollar and two cents per one hundred dollars of taxable valuation but less than one dollar and three cents per one hundred dollars of taxable valuation, the percentage shall be seventy percent;

(d) If such levy was at least one dollar and three cents per one hundred dollars of taxable valuation but less than one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be eighty percent; and

(e) If such levy was at least one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be ninety percent.

**Source:** Laws 2008, LB988, § 20; Laws 2009, LB545, § 9; Laws 2011, LB235, § 11; Laws 2013, LB407, § 8.

**79-1007.19 Repealed. Laws 2011, LB 235, § 26.**

**79-1007.20 Student growth adjustment; school district; application; department; powers.**

(1) School districts may apply to the department for a student growth adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Such form shall require an estimate of the average daily membership for the school fiscal year for which aid is being calculated, the estimated student growth calculated by subtracting the fall membership of the current school fiscal year from the estimated average daily membership for the school fiscal year for which aid is being calculated, and evidence supporting the estimates. On or before the immediately following December 1, the department shall approve the estimated student growth, approve a modified student growth, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The student growth adjustment for each approved district shall equal the sum of the product of the school district's basic funding per formula student multiplied by the difference of the approved student growth minus the greater of twenty-five students or one percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated plus the product of fifty percent of the school district's basic funding per formula student multiplied by the greater of twenty-five students or one percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(3) The department shall calculate a student growth adjustment correction for each district that received a student growth adjustment for aid distributed in the most recently available complete data year. Such student growth correction shall equal the product of the difference of the actual student growth for such school fiscal year minus the estimated student growth for such school fiscal year used to calculate the student growth adjustment for such school fiscal year multiplied by the school district's basic funding per formula student used in the final calculation of aid pursuant to section 79-1065 for such school fiscal year, except that the absolute value of a negative correction shall not exceed the original adjustment.

**Source:** Laws 2008, LB988, § 22; Laws 2009, LB549, § 30; Laws 2013, LB410, § 9; Laws 2014, LB725, § 1.  
Effective date April 3, 2014.

**79-1007.21 Two-year new school adjustment; school district; application; department; powers.**

(1) For school fiscal year 2009-10 and each school fiscal year thereafter, school districts may apply to the department for a two-year new school

adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which the first-year new school adjustment would be included in the calculation of state aid. Such form shall require evidence of recent and expected student growth, evidence that a new building or the expansion or remodeling of an existing building is being completed to provide additional student capacity to accommodate such growth and not to replace an existing building, evidence that the school fiscal year for which the district would receive the first-year adjustment will be the first full school fiscal year for which students will utilize such additional capacity, and evidence of the estimated additional student capacity to be provided by the project. On or before the immediately following December 1, the department shall approve the estimated additional capacity for use in the adjustment, approve a modified estimated additional capacity for use in the adjustment, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. Each approval shall include an approved estimated additional student capacity for the new building. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The first-year new school adjustment for each approved district shall equal the school district's basic funding per formula student multiplied by twenty percent of the approved estimated additional student capacity. The second-year new school adjustment for each approved district shall equal the school district's basic funding per formula student multiplied by ten percent of the approved estimated additional student capacity.

**Source:** Laws 2008, LB988, § 23; Laws 2009, LB549, § 31.

**79-1007.22 New learning community transportation adjustment; application; department; powers.**

(1) For state aid calculated for each of the second and third full school fiscal years of a new learning community, each member school district may apply to the department for a new learning community transportation adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which the new learning community transportation adjustment would be included in the calculation of state aid. Such form shall require evidence supporting estimates of increased transportation costs for the district due to the provisions of subsection (2) of section 79-611. On or before the immediately following December 1, the department shall approve the estimate of increased transportation costs for use in the adjustment, approve a modified estimate of increased transportation costs for use in the adjustment, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The new learning community transportation adjustment shall equal the approved estimate of increased transportation costs due to the provisions of subsection (2) of section 79-611. School districts shall submit evidence of the actual increase in transportation costs due to the provisions of subsection (2) of

section 79-611, and the department shall recalculate the adjustment using such actual costs pursuant to section 79-1065.

**Source:** Laws 2008, LB988, § 24; Laws 2009, LB62, § 4; Laws 2009, LB549, § 32.

**79-1007.23 Instructional time allowance; calculation.**

(1)(a) For state aid calculated for school fiscal years through school fiscal year 2012-13, the department shall calculate an instructional time allowance for each district which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. The instructional time allowance shall be equal to the product of the formula students of such district multiplied by the instructional time factor for such district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student.

(b) The instructional time factor shall equal the difference of the ratio of the district's average hours of instruction for each full-time student during the regular school year for the most recently available complete data year divided by the statewide average hours of instruction for each full-time student during the regular school year for the most recently available complete data year minus one, except that if the result is less than zero, the instructional time factor shall equal zero.

(c) The average hours of instruction shall be defined by the department and shall be based on scheduled time for courses and the number of students participating in such courses as reported to the department for the most recently available complete data year. Hours of instruction shall not include extracurricular activities outside of the regular school day or time designated for students to eat lunch. The statewide average hours of instruction for each student shall be an average of the averages for all school districts.

(2)(a) For state aid calculated for school fiscal years 2013-14 through 2015-16, the department shall calculate an instructional time allowance for a school district if the average days in session for such school district exceeds one hundred seventy-five days for the most recently available complete data year.

(b) For purposes of this subsection:

(i) The allowance student days for each qualifying school district shall equal the formula students for such district multiplied by the difference of the average days in session for such school district minus one hundred seventy-five days;

(ii) The average days in session for each school district shall equal a weighted average of the days in session for all schools in the school district as defined by the department; and

(iii) The statewide allowance student days shall equal the sum of the allowance student days for all qualifying school districts.

(c) For school fiscal years 2013-14 and 2014-15, the instructional time allowance for each qualifying school district shall equal the product of twenty million dollars multiplied by the ratio of the allowance student days for such school district divided by the statewide allowance student days.

(d) For school fiscal year 2015-16, the instructional time allowance for each qualifying school district shall equal the product of ten million dollars multi-

plied by the ratio of the allowance student days for such school district divided by the statewide allowance student days.

(e) Fifty percent of the instructional time allowance calculated pursuant to this subsection for each qualifying school district shall be paid to such school district as instructional time aid for the school fiscal year for which aid is being calculated.

**Source:** Laws 2008, LB988, § 25; Laws 2009, LB545, § 10; Laws 2009, First Spec. Sess., LB5, § 9; Laws 2010, LB1071, § 16; Laws 2013, LB407, § 9; Laws 2014, LB967, § 13.  
Effective date April 3, 2014.

**79-1007.24 Repealed. Laws 2011, LB 235, § 26.**

**79-1007.25 Teacher education allowance; calculation.**

For school fiscal years 2013-14 through 2015-16, the department shall calculate a teacher education allowance for each district as follows:

(1) Teacher education points shall be calculated for each district by the department based upon data from the fall personnel report required pursuant to section 79-804 for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid. Each full-time equivalent teacher shall (a) be under contract with a school district as required pursuant to section 79-818 and (b) only be counted one time in awarding any points pursuant to this section. Each district shall receive one point for each full-time equivalent teacher who has earned and been awarded a master's degree or an education specialist's degree and two points for each full-time equivalent teacher who has earned and been awarded a doctoral degree;

(2) For school fiscal years 2013-14 and 2014-15, the teacher education allowance for each district shall equal the product of thirty million dollars multiplied by the ratio of teacher education points calculated for the district divided by the aggregate teacher education points calculated for all districts. Fifty percent of the teacher education allowance calculated pursuant to this subdivision for each school district shall be paid to such school district as teacher education aid for the school fiscal year for which aid is being calculated; and

(3) For school fiscal year 2015-16, the teacher education allowance for each district shall equal the product of fifteen million dollars multiplied by the ratio of teacher education points calculated for the district divided by the aggregate teacher education points calculated for all districts. Fifty percent of the teacher education allowance calculated pursuant to this subdivision for each school district shall be paid to such school district as teacher education aid for the school fiscal year for which aid is being calculated.

**Source:** Laws 2009, First Spec. Sess., LB5, § 8; Laws 2013, LB407, § 10; Laws 2014, LB967, § 14.  
Effective date April 3, 2014.

**79-1008 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-1008.01 Equalization aid; amount.**

For all school fiscal years except school fiscal year 2010-11, except as provided in sections 79-1008.02 and 79-1009, each local system shall receive

equalization aid in the amount that the total formula need of each local system, as determined pursuant to sections 79-1007.04 to 79-1007.23 and 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

For school fiscal year 2010-11, except as provided in sections 79-1008.02 and 79-1009, each local system shall receive equalization aid in the amount by which one hundred two and twenty-three hundredths percent of the total formula need of each local system, as determined pursuant to sections 79-1007.04 to 79-1007.23 and 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

**Source:** Laws 1997, LB 710, § 11; Laws 1997, LB 806, § 38; Laws 1998, LB 989, § 7; Laws 1998, Spec. Sess., LB 1, § 19; Laws 1999, LB 149, § 6; Laws 2001, LB 797, § 20; Laws 2002, LB 898, § 8; Laws 2003, LB 540, § 4; Laws 2004, LB 1093, § 5; Laws 2006, LB 1024, § 84; Laws 2008, LB988, § 33; Laws 2009, First Spec. Sess., LB5, § 10; Laws 2011, LB8, § 2; Laws 2011, LB18, § 5; Laws 2011, LB235, § 12.

#### **79-1008.02 Minimum levy adjustment; calculation; effect.**

A minimum levy adjustment shall be calculated and applied to any local system that has a general fund common levy for the fiscal year during which aid is certified that is less than the maximum levy, for such fiscal year for such local system, allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less five cents for learning communities and less ten cents for all other local systems. To calculate the minimum levy adjustment, the department shall subtract the local system general fund common levy for such fiscal year for such local system from the maximum levy allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less five cents for learning communities and less ten cents for all other local systems and multiply the result by the local system's adjusted valuation divided by one hundred. The minimum levy adjustment shall be added to the formula resources of the local system for the determination of equalization aid pursuant to section 79-1008.01. If the minimum levy adjustment is greater than or equal to the allocated income tax funds calculated pursuant to section 79-1005.01, the local system shall not receive allocated income tax funds. If the minimum levy adjustment is less than the allocated income tax funds calculated pursuant to section 79-1005.01, the local system shall receive allocated income tax funds in the amount of the difference between the allocated income tax funds calculated pursuant to section 79-1005.01 and the minimum levy adjustment. This section does not apply to the calculation of aid for a local system containing a learning community for the first school fiscal year for which aid is calculated for such local system.

**Source:** Laws 1997, LB 806, § 39; Laws 1998, Spec. Sess., LB 1, § 20; Laws 2001, LB 797, § 21; Laws 2002, LB 898, § 9; Laws 2006, LB 1024, § 85; Laws 2007, LB641, § 26; Laws 2008, LB988, § 34; Laws 2011, LB235, § 13.

#### **79-1009 Option school districts; net option funding; calculation.**

(1)(a) A district shall receive net option funding if option students as defined in section 79-233 (i) were actually enrolled in the school year immediately

preceding the school year in which the aid is to be paid or (ii) will be enrolled in the school year in which the aid is to be paid as converted contract option students.

(b) The determination of the net number of option students shall be based on (i) the number of students enrolled in the district as option students and the number of students residing in the district but enrolled in another district as option students as of the day of the fall membership count pursuant to section 79-528, for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, and (ii) the number of option students that will be enrolled in the district or enrolled in another district as converted contract option students for the fiscal year in which the aid is to be paid.

(c) Net number of option students means the difference of the number of option students enrolled in the district minus the number of students residing in the district but enrolled in another district as option students.

(2) For purposes of this section, net option funding shall be the sum of the product of the net number of option students multiplied by the statewide average basic funding per formula student.

(3) A district's net option funding shall be zero if the calculation produces a negative result.

Payments made under this section shall be made from the funds to be disbursed under section 79-1005.01.

Such payments shall go directly to the option school district but shall count as a formula resource for the local system.

**Source:** Laws 1996, LB 1050, § 18; Laws 1997, LB 806, § 40; Laws 1998, Spec. Sess., LB 1, § 21; Laws 1999, LB 813, § 21; Laws 2001, LB 797, § 22; Laws 2001, LB 833, § 5; Laws 2002, LB 898, § 10; Laws 2004, LB 1093, § 6; Laws 2008, LB988, § 35; Laws 2011, LB235, § 14.

**79-1009.01 Converted contract option students; department; calculations; notice to applicant district.**

For school fiscal years prior to school fiscal year 2027-28, a district which will have converted contract option students shall apply to the department on a form approved by the department within fifteen days after April 27, 2011, for converted contract option students for school fiscal year 2011-12 and on or before November 1 of the calendar year preceding the beginning of all other school fiscal years for which there will be converted contract option students. The department shall determine the amount of tuition receipts from converted contracts to be excluded from the calculation of local system formula resources for each of the first two school fiscal years for which the converted contract will not be in effect and shall determine the number of converted contract option students to be attributed to the receiving district in the calculation of state aid for the first school fiscal year for which the converted contract will not be in effect, and the same number shall be attributed as optioning out of the resident school district. In the final calculation of state aid pursuant to section 79-1065, students that were attributed as optioning into or out of a district shall be replaced with the actual number from fall membership. The department shall

notify the applicant district within thirty days after receipt of the completed application.

**Source:** Laws 2011, LB235, § 15.

**79-1010 Repealed. Laws 2011, LB 8, § 4; Laws 2011, LB 235, § 26.**

**79-1010.01 Repealed. Laws 2003, LB 10, § 1; Laws 2003, LB 67, § 34.**

**79-1011 Support grants for consolidation; qualification; requirements; payment.**

(1) To support school districts which consolidate, support grants shall be paid to reorganized Class III school districts resulting from consolidations which meet the requirements of this section. This section shall only apply to consolidations with an effective date after April 3, 2014.

(2) To qualify for support grants under this section, the consolidation must be approved for support grants by the State Committee for the Reorganization of School Districts. Consolidating school districts shall file an application with the state committee on or before June 15, 2014, or within thirty days following the issuance of the boundary change order pursuant to subsection (1) of section 79-479, whichever is later. The state committee shall approve or disapprove support grants within thirty days after receipt of the application.

(3) For support grants to be approved by the state committee, a reorganization study, including efficiency, demographic, curriculum, facility, financial, and community components, must be completed prior to the reorganization. If a study containing such elements has been completed and the study indicates that the reorganization will most likely result in more efficiency in the delivery of educational services or greater educational opportunities, the state committee may approve support grants.

(4) The amount of the support grant for each qualifying consolidation shall equal one hundred twenty-five thousand dollars multiplied by the number of school districts that are consolidating into the new reorganized Class III school district.

(5) Except as otherwise provided in this subsection, support grants shall be calculated as of August 2 immediately preceding the first full school fiscal year the consolidation will be in effect and shall be paid directly to the reorganized Class III district from the School District Reorganization Fund. The payments shall be made in ten as nearly as possible equal payments on the last business day of each month, beginning in September and ending the following June. If the total amount of support grants for that school fiscal year exceeds the amount in the School District Reorganization Fund, the support grants shall be reduced proportionately so that the total amount of support grants equals the amount of funds so appropriated. For support grants approved for school fiscal year 2014-15, an amount equal to any reduction in such support grants for such school fiscal year shall be paid from the amount available in the School District Reorganization Fund for school fiscal year 2015-16 prior to the payment of any support grants approved for school fiscal year 2015-16 and shall not be reduced unless the total for support grants approved for school fiscal year 2014-15 exceeds the total amount available in the School District Reorganization Fund for the combination of school fiscal years 2014-15 and 2015-16. The support

grants shall not be included in local system formula resources as calculated under section 79-1018.01.

**Source:** Laws 2004, LB 1091, § 9; Laws 2009, LB545, § 12; Laws 2014, LB967, § 15.

Effective date April 3, 2014.

**79-1012 School District Reorganization Fund; created; use; investment.**

The School District Reorganization Fund is created. The fund shall be administered by the department. The fund shall consist of money transferred from the Education Innovation Fund and shall be used to provide support grants to reorganized school districts pursuant to section 79-1011. Any money in the School District Reorganization 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 1091, § 10; Laws 2007, LB603, § 4; Laws 2009, LB545, § 13; Laws 2011, LB333, § 10; Laws 2014, LB967, § 16.

Effective date April 3, 2014.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-1013 Poverty plan; submission required; when; review; approval; elements required; appeal.**

(1) On or before October 15 of each year, each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan for the next school fiscal year to the department and to the learning community coordinating council of any learning community of which the school district is a member. On or before the immediately following December 1, (a) the department shall approve or disapprove such plan for school districts that are not members of a learning community based on the inclusion of the elements required pursuant to this section and (b) the learning community coordinating council and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community based on the inclusion of such elements. On or before the immediately following December 5, each learning community coordinating council shall certify to the department the approval or disapproval of the poverty plan for each member school district.

(2) In order to be approved pursuant to this section, a poverty plan shall include an explanation of how the school district will address the following issues for such school fiscal year:

(a) Attendance, including absence followup and transportation for students qualifying for free or reduced-price lunches who reside more than one mile from the attendance center;

(b) Student mobility, including transportation to allow a student to continue attendance at the same school if the student moves to another attendance area within the same school district or within the same learning community;

(c) Parental involvement at the school-building level with a focus on the involvement of parents in poverty and from other diverse backgrounds;

(d) Parental involvement at the school-district level with a focus on the involvement of parents in poverty and from other diverse backgrounds;

(e) Class size reduction or maintenance of small class sizes in elementary grades;

(f) Scheduled teaching time on a weekly basis that will be free from interruptions;

(g) Access to early childhood education programs for children in poverty;

(h) Student access to social workers;

(i) Access to summer school, extended-school-day programs, or extended-school-year programs;

(j) Mentoring for new and newly reassigned teachers;

(k) Professional development for teachers and administrators, focused on addressing the educational needs of students in poverty and students from other diverse backgrounds;

(l) Coordination with elementary learning centers if the school district is a member of a learning community; and

(m) An evaluation to determine the effectiveness of the elements of the poverty plan.

(3) The state board shall establish a procedure for appeal of decisions of the department and of learning community coordinating councils to the state board for a final determination.

**Source:** Laws 2007, LB641, § 23; Laws 2008, LB988, § 36; Laws 2010, LB1071, § 17.

**79-1014 Limited English proficiency plan; submission required; when; review; approval; elements required; appeal.**

(1) On or before October 15 of each year, each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan for the next school fiscal year to the department and to the learning community coordinating council of any learning community of which the school district is a member. On or before the immediately following December 1, (a) the department shall approve or disapprove such plans for school districts that are not members of a learning community, based on the inclusion of the elements required pursuant to this section and (b) the learning community coordinating council, and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community, based on the inclusion of such elements. On or before the immediately following December 5, each learning community coordinating council shall certify to the department the approval or disapproval of the limited English proficiency plan for each member school district.

(2) In order to be approved pursuant to this section, a limited English proficiency plan must include an explanation of how the school district will address the following issues for such school fiscal year:

(a) Identification of students with limited English proficiency;

(b) Instructional approaches;

(c) Assessment of such students' progress toward mastering the English language; and

(d) An evaluation to determine the effectiveness of the elements of the limited English proficiency plan.

(3) The state board shall establish a procedure for appeal of decisions of the department and of learning community coordinating councils to the state board for a final determination.

**Source:** Laws 2007, LB641, § 24; Laws 2008, LB988, § 37; Laws 2009, LB549, § 33; Laws 2010, LB1071, § 18.

**79-1015 Repealed. Laws 2009, LB 545, § 26.**

**79-1015.01 Local system formula resources; local effort rate yield; determination.**

(1) Local system formula resources shall include local effort rate yield which shall be computed as prescribed in this section.

(2) For each school fiscal year except school fiscal years 2011-12 through 2013-14: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less five cents; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

(3) For school fiscal years 2011-12 and 2012-13: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less one and five-hundredths of one cent; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

(4) For school fiscal year 2013-14: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less two cents; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total

formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

**Source:** Laws 1997, LB 806, § 45; Laws 1998, Spec. Sess., LB 1, § 23; Laws 1999, LB 149, § 8; Laws 2001, LB 797, § 24; Laws 2007, LB641, § 27; Laws 2008, LB988, § 38; Laws 2011, LB235, § 16; Laws 2013, LB407, § 11; Laws 2014, LB725, § 2.  
Effective date April 3, 2014.

**79-1016 Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.**

(1) On or before August 25, the county assessor shall certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Tax Commissioner. The county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments shall be certified to the Property Tax Administrator on or before September 30.

(2) On or before October 10, the Property Tax Administrator shall compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (3) of this section. The Property Tax Administrator shall notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation shall be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by section 77-1327. The Tax Commissioner shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid purposes.

(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural land, ninety-six percent of actual value;

(b) For agricultural and horticultural land, seventy-two percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation pursuant to section 77-1344, seventy-two percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

(4) On or before November 10, any local system may file with the Tax Commissioner written objections to the adjusted valuations prepared by the Property Tax Administrator, stating the reasons why such adjusted valuations

are not the valuations required by subsection (3) of this section. The Tax Commissioner shall fix a time for a hearing. Either party shall be permitted to introduce any evidence in reference thereto. On or before January 1, the Tax Commissioner shall enter a written order modifying or declining to modify, in whole or in part, the adjusted valuations and shall certify the order to the State Department of Education. Modification by the Tax Commissioner shall be based upon the evidence introduced at hearing and shall not be limited to the modification requested in the written objections or at hearing. A copy of the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Tax Commissioner may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

(5) On or before November 10, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to clerical error as defined in section 77-128 or, for agricultural and horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-1347.01. On or before the following January 1, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(6) On or before May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon the filing of the written request, the Tax Commissioner shall require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Tax Commissioner. The recertified valuation shall be the valuation that was certified on the tax list, pursuant to section 77-1613, increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(7) No injunction shall be granted restraining the distribution of state aid based upon the adjusted valuations pursuant to this section.

(8) A school district whose state aid is to be calculated pursuant to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such subsection may apply to the state board for lump-sum payment of such postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the entire amount applied for or any portion of such amount. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district.

**Source:** Laws 1990, LB 1059, § 9; Laws 1991, LB 829, § 32; Laws 1991, LB 511, § 76; Laws 1992, LB 245, § 81; Laws 1992, LB 719A,

§ 198; Laws 1994, LB 1290, § 7; Laws 1995, LB 490, § 185; R.S.Supp.,1995, § 79-3809; Laws 1996, LB 900, § 662; Laws 1996, LB 934, § 5; Laws 1996, LB 1050, § 24; Laws 1997, LB 270, § 103; Laws 1997, LB 271, § 53; Laws 1997, LB 342, § 4; Laws 1997, LB 595, § 6; Laws 1997, LB 713, § 3; Laws 1997, LB 806, § 46; Laws 1998, Spec. Sess., LB 1, § 24; Laws 1999, LB 194, § 34; Laws 1999, LB 813, § 22; Laws 2000, LB 968, § 80; Laws 2001, LB 170, § 28; Laws 2002, LB 994, § 30; Laws 2004, LB 973, § 66; Laws 2005, LB 126, § 46; Laws 2005, LB 263, § 16; Laws 2006, LB 808, § 46; Laws 2006, LB 968, § 16; Referendum 2006, No. 422; Laws 2007, LB334, § 101; Laws 2008, LB988, § 39; Laws 2009, LB166, § 21.

#### Cross References

**Tax Equalization and Review Commission**, see section 77-5003.

The plain language of this section (formerly section 79-3809) requires the Nebraska Department of Revenue to adopt and promulgate rules and regulations to regulate the valuation pro-

cess. *Loup City Pub. Sch. v. Nebraska Dept. of Rev.*, 252 Neb. 387, 562 N.W.2d 551 (1997).

### **79-1017 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

#### **79-1017.01 Local system formula resources; amounts included.**

(1) For state aid calculated for school fiscal year 2013-14, local system formula resources includes retirement aid determined under section 79-1028.03, teacher education aid determined for each district pursuant to subdivision (2) of section 79-1007.25, instructional time aid determined pursuant to subsection (2) of section 79-1007.23, allocated income tax funds determined for each district pursuant to section 79-1005.01, and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

(2) For state aid calculated for school fiscal years 2014-15 and 2015-16, local system formula resources includes teacher education aid determined for each district pursuant to section 79-1007.25, instructional time aid determined pursuant to subsection (2) of section 79-1007.23, allocated income tax funds determined for each district pursuant to section 79-1005.01, and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

(3) For state aid calculated for school fiscal year 2016-17 and each school fiscal year thereafter, local system formula resources includes allocated income tax funds determined for each district pursuant to section 79-1005.01 and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

**Source:** Laws 1997, LB 806, § 48; Laws 2002, LB 898, § 11; Laws 2009, LB545, § 14; Laws 2011, LB235, § 17; Laws 2013, LB407, § 12; Laws 2014, LB967, § 17.  
Effective date April 3, 2014.

### **79-1018 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

#### **79-1018.01 Local system formula resources; other actual receipts included.**

Except as otherwise provided in this section, local system formula resources include other actual receipts available for the funding of general fund operating expenditures as determined by the department for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid. Other actual receipts include:

- (1) Public power district sales tax revenue;
- (2) Fines and license fees;
- (3) Tuition receipts from individuals, other districts, or any other source except receipts derived from adult education, receipts derived from summer school tuition, receipts derived from early childhood education tuition, tuition receipts from converted contracts beginning with the calculation of state aid to be distributed in school fiscal year 2011-12, and receipts from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;
- (4) Transportation receipts;
- (5) Interest on investments;
- (6) Other miscellaneous noncategorical local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations;
- (7) Special education receipts;
- (8) Special education receipts and non-special education receipts from the state for wards of the court and wards of the state;
- (9) All receipts from the temporary school fund. Receipts from the temporary school fund shall only include (a) receipts pursuant to section 79-1035, to the extent that such receipts for the calculation of aid for school fiscal year 2018-19 and each school fiscal year thereafter are not returned to the temporary school fund pursuant to section 79-309.01, and (b) the receipt of funds pursuant to section 79-1036 for property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202;
- (10) Motor vehicle tax receipts received;
- (11) Pro rata motor vehicle license fee receipts;
- (12) Other miscellaneous state receipts excluding revenue from the textbook loan program authorized by section 79-734;
- (13) Impact aid entitlements for the school fiscal year which have actually been received by the district to the extent allowed by federal law;
- (14) All other noncategorical federal receipts;
- (15) All receipts pursuant to the enrollment option program under sections 79-232 to 79-246;
- (16) Receipts under the federal Medicare Catastrophic Coverage Act of 1988, as such act existed on January 1, 2014, as authorized pursuant to sections 43-2510 and 43-2511 for services to school-age children, excluding amounts designated as reimbursement for costs associated with the implementation and administration of the billing system pursuant to section 43-2511;
- (17) Receipts for accelerated or differentiated curriculum programs pursuant to sections 79-1106 to 79-1108.03; and

(18) Revenue received from the nameplate capacity tax distributed pursuant to section 77-6204.

**Source:** Laws 1997, LB 710, § 12; Laws 1997, LB 806, § 50; Laws 1998, LB 306, § 44; Laws 1998, LB 1229, § 4; Laws 1998, Spec. Sess., LB 1, § 25; Laws 1999, LB 149, § 9; Laws 2001, LB 797, § 25; Laws 2001, LB 833, § 6; Laws 2006, LB 1208, § 6; Laws 2007, LB603, § 5; Laws 2008, LB988, § 40; Laws 2010, LB1014, § 2; Laws 2010, LB1048, § 16; Laws 2011, LB235, § 18; Laws 2014, LB276, § 5.  
Effective date July 18, 2014.

**Cross References**

Special Education Act, see section 79-1110.

**79-1019 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-1020 Aid allocation adjustments; department; duties.**

Nothing in the Tax Equity and Educational Opportunities Support Act shall be construed as altering, amending, or changing in any manner the duties or obligations of the department under section 79-1065, and the provisions of the act shall not be construed as relieving the department of its obligation to make appropriate aid allocation adjustments following a final determination of the amount of funds due to any school district or local system under the provisions of or through the operation of the act.

**Source:** Laws 1995, LB 542, § 3; R.S.Supp.,1995, § 79-3811.02; Laws 1996, LB 900, § 666; Laws 1996, LB 1050, § 28; Laws 1998, Spec. Sess., LB 1, § 26.

**79-1021 Tax Equity and Educational Opportunities Fund; created; investment.**

The Tax Equity and Educational Opportunities Fund is created. The fund shall receive dedicated income tax appropriations and appropriations made by the Legislature to fund the Tax Equity and Educational Opportunities Support Act and shall be administered by the state board. 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 1059, § 12; Laws 1994, LB 1066, § 94; Laws 1995, LB 840, § 8; R.S.Supp.,1995, § 79-3812; Laws 1996, LB 900, § 667; Laws 1996, LB 1050, § 29; Laws 1998, Spec. Sess., LB 1, § 27.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-1022 Distribution of income tax receipts and state aid; effect on budget.**

(1) On or before April 10, 2014, and on or before March 1 of each year thereafter for each ensuing fiscal year, the department shall determine the amounts to be distributed to each local system and each district for the ensuing school fiscal year pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative

Services, the Auditor of Public Accounts, each learning community, and each district. The amount to be distributed to each district that is not a member of a learning community from the amount certified for a local system shall be proportional based on the formula students attributed to each district in the local system. The amount to be distributed to each district that is a member of a learning community from the amount certified for the local system shall be proportional based on the formula needs calculated for each district in the local system. On or before April 10, 2014, and on or before March 1 of each year thereafter for each ensuing fiscal year, the department shall report the necessary funding level for the ensuing school fiscal year to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. The report submitted to the committees of the Legislature shall be submitted electronically. Except as otherwise provided in this subsection, certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and deducted prior to calculating the property tax request in the district's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024.

(2) Except as provided in this subsection, subsection (8) of section 79-1016, and sections 79-1033 and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning in September of each ensuing school fiscal year and ending in June of the following year, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year.

**Source:** Laws 1990, LB 1059, § 13; Laws 1991, LB 511, § 79; Laws 1992, LB 245, § 84; Laws 1994, LB 1290, § 8; Laws 1994, LB 1310, § 16; Laws 1995, LB 840, § 9; R.S.Supp., 1995, § 79-3813; Laws 1996, LB 900, § 668; Laws 1996, LB 1050, § 30; Laws 1997, LB 710, § 13; Laws 1997, LB 713, § 5; Laws 1997, LB 806, § 51; Laws 1998, Spec. Sess., LB 1, § 28; Laws 1999, LB 149, § 10; Laws 1999, LB 194, § 35; Laws 1999, LB 813, § 23; Laws 2002, LB 898, § 12; Laws 2002, Second Spec. Sess., LB 4, § 1; Laws 2003, LB 67, § 12; Laws 2003, LB 540, § 5; Laws 2004, LB 973, § 67; Laws 2005, LB 126, § 47; Laws 2005, LB 198, § 3; Laws 2006, LB 1024, § 86; Referendum 2006, No. 422; Laws 2007, LB21, § 3; Laws 2007, LB641, § 28; Laws 2008, LB988, § 41; Laws 2009, LB61, § 1; Laws 2009, LB545, § 15; Laws 2009, LB548, § 1; Laws 2010, LB711, § 2; Laws 2010, LB1071, § 19; Laws 2011, LB18, § 6; Laws 2012, LB633, § 1; Laws 2012, LB782, § 159; Laws 2013, LB408, § 1; Laws 2014, LB838, § 1. Effective date February 27, 2014.

**79-1022.01 Repealed. Laws 2001, LB 797, § 55.**

**79-1022.02 School fiscal year 2012-13 certifications null and void.**

Notwithstanding any other provision of law, any certification of state aid pursuant to section 79-1022, certification of budget authority pursuant to section 79-1023, and certification of applicable allowable reserve percentages

pursuant to section 79-1027 completed prior to February 29, 2012, for school fiscal year 2012-13 is null and void.

**Source:** Laws 2002, LB 898, § 13; Laws 2003, LB 540, § 6; Laws 2008, LB988, § 42; Laws 2011, LB18, § 7; Laws 2012, LB633, § 2.

**79-1023 School district; general fund budget of expenditures; limitation; department; certification.**

(1) On or before April 10, 2014, and on or before March 1 of each year thereafter, the department shall determine and certify to each school district budget authority for the general fund budget of expenditures for the ensuing school fiscal year.

(2) Except as provided in sections 79-1028.01, 79-1029, and 79-1030, each school district shall have budget authority for the general fund budget of expenditures equal to the greater of (a) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated, (b) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by an amount equal to any student growth adjustment calculated for the school fiscal year for which budget authority is being calculated, or (c) one hundred ten percent of formula need for the school fiscal year for which budget authority is being calculated minus the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year, which special education budget of expenditures is increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated.

(3) For any school fiscal year for which the budget authority for the general fund budget of expenditures for a school district is based on a student growth adjustment, the budget authority for the general fund budget of expenditures for such school district shall be adjusted in future years to reflect any student growth adjustment corrections related to such student growth adjustment.

**Source:** Laws 1990, LB 1059, § 14; Laws 1991, LB 829, § 33; Laws 1992, LB 1063, § 202; Laws 1992, Second Spec. Sess., LB 1, § 173; Laws 1995, LB 613, § 3; Laws 1996, LB 299, § 27; R.S.Supp., 1995, § 79-3814; Laws 1996, LB 900, § 669; Laws 1998, LB 989, § 8; Laws 2003, LB 67, § 13; Laws 2008, LB988, § 43; Laws 2009, LB61, § 2; Laws 2009, LB545, § 16; Laws 2009, LB548, § 2; Laws 2009, First Spec. Sess., LB5, § 11; Laws 2010, LB711, § 3; Laws 2010, LB1071, § 20; Laws 2011, LB18, § 8; Laws 2011, LB235, § 19; Laws 2012, LB633, § 3; Laws 2013, LB408, § 2; Laws 2014, LB838, § 2.

Effective date February 27, 2014.

**Cross References**

Retirement expenditures, not exempt from limitations, see section 79-977.

**79-1024 Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect.**

(1) The department may require each district to submit to the department a duplicate copy of such portions of the district's budget statement as the Commissioner of Education directs. The department may verify any data used to meet the requirements of the Tax Equity and Educational Opportunities Support Act. The Auditor of Public Accounts shall review each district's budget statement for statutory compliance, make necessary changes in the budget documents for districts to effectuate the budget limitations imposed pursuant to sections 79-1023 to 79-1030, and notify the Commissioner of Education of any district failing to submit to the auditor the budget documents required pursuant to this subsection by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511.

(2) If a school district fails to submit to the department or the auditor the budget documents required pursuant to subsection (1) of this section by the date established in subsection (1) of section 13-508 or fails to make any corrections of errors in the documents pursuant to section 13-504 or 13-511, the commissioner, upon notification from the auditor or upon his or her own knowledge that the required budget documents and any required corrections of errors from any school district have not been properly filed in accordance with the Nebraska Budget Act and after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the required budget documents or corrections of errors are received by the auditor and the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of the required budget documents or corrections of errors. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of property tax receipts allocated to the school district by the learning community coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031. The board of any district failing to submit to the department or the auditor the budget documents required pursuant to this section by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511 shall be liable to the school district for all school money which such district may lose by such failing.

**Source:** Laws 1990, LB 1059, § 15; Laws 1991, LB 511, § 80; Laws 1992, LB 245, § 85; Laws 1992, LB 1001, § 43; R.S.1943, (1994), § 79-3815; Laws 1996, LB 900, § 670; Laws 1997, LB 269, § 61; Laws 1997, LB 710, § 14; Laws 1998, Spec. Sess., LB 1, § 29; Laws 1999, LB 272, § 93; Laws 1999, LB 813, § 24; Laws 2001, LB 797, § 26; Laws 2003, LB 67, § 14; Laws 2006, LB 1024, § 87; Laws 2008, LB988, § 44; Laws 2009, LB392, § 11.

Cross References

Nebraska Budget Act, see section 13-501.

**79-1025 Basic allowable growth rate.**

The basic allowable growth rate for general fund expenditures other than expenditures for special education shall be the base limitation established under section 77-3446. The budget authority for special education for all classes of school districts shall be the actual anticipated expenditures for special education subject to the approval of the state board. Such budget authority and funds generated pursuant to such budget authority shall be used only for special education expenditures.

**Source:** Laws 1990, LB 1059, § 16; Laws 1991, LB 511, § 81; Laws 1992, LB 245, § 86; Laws 1992, LB 1063, § 203; Laws 1992, Second Spec. Sess., LB 1, § 174; Laws 1995, LB 613, § 4; Laws 1996, LB 299, § 28; R.S.Supp.,1995, § 79-3816; Laws 1996, LB 900, § 671; Laws 1998, LB 989, § 9; Laws 1998, Spec. Sess., LB 1, § 30; Laws 2003, LB 540, § 7; Laws 2011, LB235, § 20.

Cross References

Retirement expenditures, not exempt from limitations, see section 79-977.

**79-1026 Repealed. Laws 2011, LB 235, § 26.**

**79-1026.01 Repealed. Laws 2011, LB 235, § 26.**

**79-1027 Budget; restrictions.**

No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0 - 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before April 10, 2014, and on or before March 1 each year thereafter, the department shall determine and certify each district’s applicable allowable reserve percentage for the ensuing school fiscal year.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district’s applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

**Source:** Laws 1990, LB 1059, § 18; Laws 1991, LB 511, § 83; Laws 1992, LB 245, § 88; Laws 1992, LB 1063, § 204; Laws 1992, Second Spec. Sess., LB 1, § 175; R.S.1943, (1994), § 79-3818; Laws

1996, LB 900, § 673; Laws 1998, Spec. Sess., LB 1, § 31; Laws 1999, LB 149, § 12; Laws 1999, LB 813, § 26; Laws 2001, LB 797, § 28; Laws 2002, LB 460, § 2; Laws 2003, LB 67, § 16; Laws 2005, LB 126, § 49; Referendum 2006, No. 422; Laws 2007, LB21, § 5; Laws 2009, LB61, § 4; Laws 2009, LB545, § 18; Laws 2009, LB548, § 4; Laws 2010, LB711, § 5; Laws 2010, LB1071, § 22; Laws 2011, LB18, § 10; Laws 2012, LB633, § 4; Laws 2013, LB408, § 3; Laws 2014, LB838, § 3.  
Effective date February 27, 2014.

**79-1027.01 Property tax requests exceeding maximum levy; reductions; procedure.**

If the total levy required for property tax requests for all general fund budgets in a local system exceeds the amount that can be generated by the maximum levy pursuant to subdivision (2)(a) of section 77-3442, the high school district shall be entitled to take the necessary steps to comply with such maximum levy by:

(1) Reducing the property tax request for each district up to the amount by which the district's budgeted general fund cash reserve exceeds fifteen percent of the district's general fund budget of expenditures for the preceding school fiscal year, and for Class I districts, this difference multiplied by the percentage of the Class I district's valuation which is affiliated with or part of the high school district;

(2) If the reductions under subdivision (1) of this section do not reduce the required levy to the maximum levy permitted under subdivision (2)(a) of section 77-3442, reducing the property tax request for each district proportionately based on the amount of the difference between the district's general fund budget of expenditures minus the special education budget of expenditures for the current budget year and a two-year average for the two preceding school fiscal years of the general fund budget of expenditures minus the special education budget of expenditures up to such difference, and for Class I districts, this difference multiplied by the percentage of the Class I district's valuation which is affiliated with or part of the high school district; and

(3) If the reductions under subdivisions (1) and (2) of this section do not reduce the required levy to the maximum levy permitted under subdivision (2)(a) of section 77-3442, reducing the property tax request for each district by an amount proportional to the district's share of the total property tax request for the preceding school fiscal year such that the required local system levy shall be the maximum levy allowed under subdivision (2)(a) of section 77-3442. Class I districts with multiple high school districts which are required to reduce their general fund property tax request pursuant to this section shall make such reduction as necessary to effect the total required from this calculation within each local system requiring the reduction.

**Source:** Laws 1998, LB 1219, § 14; Laws 1999, LB 813, § 27; Laws 2003, LB 67, § 17.

**79-1028 Repealed. Laws 2011, LB 235, § 26.**

**79-1028.01 School fiscal years; district may exceed certain limits; situations enumerated; state board; duties.**

(1) For each school fiscal year, a school district may exceed its budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 for such school fiscal year by a specific dollar amount for the following exclusions:

(a) Expenditures for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;

(b) Expenditures for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district;

(c) Expenditures pursuant to the Retirement Incentive Plan authorized in section 79-855 or the Staff Development Assistance authorized in section 79-856;

(d) Expenditures of amounts received from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;

(e) Expenditures to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent;

(f) Expenditures to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent;

(g) Expenditures for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year, or, to the extent that a district demonstrates to the State Board of Education pursuant to subsection (3) of this section that the agreement will result in a net savings in salary and benefit costs to the school district over a five-year period, occurring on or after the first day of the 2013-14 school year;

(h) Any expenditures in school fiscal years 2016-17 and 2017-18 of amounts specified in the notice provided by the Commissioner of Education pursuant to section 79-309.01 for teacher performance pay;

(i) The special education budget of expenditures; and

(j) Expenditures of special grant funds.

(2) For each school fiscal year, a school district may exceed its budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 for such school fiscal year by a specific dollar amount and include such dollar amount in the budget of expenditures used to calculate budget authority for the general fund budget of expenditures pursuant to section 79-1023 for future years for the following exclusions:

(a) Expenditures of support grants to be received in such school fiscal year pursuant to section 79-1011;

(b) The first school fiscal year the district will be participating in Network Nebraska for the full school fiscal year, for the difference of the estimated expenditures for such school fiscal year for telecommunications services, access to data transmission networks that transmit data to and from the school district, and the transmission of data on such networks as such expenditures are defined by the department for purposes of the distance education and telecommunications allowance minus the dollar amount of such expenditures for the second school fiscal year preceding the first full school fiscal year the district participates in Network Nebraska;

(c) Expenditures for new elementary attendance sites in the first year of operation or the first year of operation after being closed for at least one school year if such elementary attendance site will most likely qualify for the elementary site allowance in the immediately following school fiscal year as determined by the state board;

(d) For the first school fiscal year for which early childhood education membership is included in formula students for the calculation of state aid, expenditures for early childhood education equal to the amount the school district received in early childhood education grants pursuant to section 79-1103 for the prior school fiscal year, increased by the basic allowable growth rate; and

(e) For school fiscal year 2013-14, an amount not to exceed two percent over the previous school year if such increase is approved by a seventy-five percent majority vote of the school board of such district.

(3) The state board shall approve, deny, or modify the amount allowed for any exclusions to the budget authority for the general fund budget of expenditures pursuant to this section.

**Source:** Laws 2008, LB988, § 46; Laws 2008, LB1154, § 10; Laws 2009, LB545, § 19; Laws 2010, LB1014, § 3; Laws 2011, LB235, § 21; Laws 2011, LB382, § 6; Laws 2011, LB509, § 39; Laws 2013, LB407, § 13; Laws 2013, LB410, § 10; Laws 2013, LB553, § 16; Laws 2014, LB967, § 18.  
Effective date April 3, 2014.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

**Emergency Management Act**, see section 81-829.36.

### **79-1028.02 School fiscal years 2009-10 and 2010-11; American Recovery and Reinvestment Act percentage; school district allocation; computation; school district; duties.**

For each of school fiscal years 2009-10 and 2010-11, the American Recovery and Reinvestment Act percentage shall equal the amount of funding from the federal American Recovery and Reinvestment Act of 2009 to be distributed through the Tax Equity and Educational Opportunities Support Act for such school fiscal year divided by the total equalization aid to be distributed pursuant to the Tax Equity and Educational Opportunities Support Act for such school fiscal year. For each school district, the American Recovery and Reinvestment Act allocation shall equal the equalization aid to be distributed to the school district for such school fiscal year multiplied by the American Recovery and Reinvestment Act percentage for such school fiscal year. Such allocation shall only be distributed upon filing of an application signed by the superintendent.

dent and school board president of a school district and filed with the department by the superintendent of such school district, which application meets the requirements of the federal American Recovery and Reinvestment Act of 2009 and is approved by the Governor or his or her designee. A school district shall account for, report, and spend such allocation as required by the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be considered a special grant fund and shall be considered state aid for all purposes except as otherwise provided in this section and the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be adjusted in the final calculation of state aid pursuant to section 79-1065. Such allocation shall be included in the total state aid which may be adjusted pursuant to section 79-1065. Expenditures of such allocation shall be considered expenditures from the general fund of the school district and shall be included in general fund operating expenditures.

**Source:** Laws 2009, LB545, § 20; Laws 2011, LB18, § 12.

#### **79-1028.03 Retirement aid; calculation.**

For school fiscal years 2009-10 through 2013-14, an amount calculated by the department shall be paid to each school district as retirement aid equal to the product of fifteen million dollars multiplied by the school district's salary percentage. The school district's salary percentage shall equal the total salary reported by the school district on the annual financial report for the most recently available complete data year divided by the total salary reported by all school districts in the state on the annual financial report for the most recently available complete data year.

**Source:** Laws 2009, LB545, § 21.

#### **79-1028.04 School fiscal year 2010-11; federal Education Jobs Fund allocation; computation; school district; duties.**

For school fiscal year 2010-11, the federal Education Jobs Fund allocation shall equal any increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011. Such allocation shall only be payable upon meeting the requirements of this section, including approval by the Governor or his or her designee of either an application pursuant to section 79-1028.02 or an application for funding filed pursuant to this section which meets the requirements of the federal American Recovery and Reinvestment Act of 2009, signed by the superintendent and school board president of a school district and filed with the department by the superintendent of such school district. A school district shall account for, report, and spend such allocation as required by section 101 of Public Law 111-226. Such allocation shall not be considered special grant funds and shall be considered state aid for all purposes except as otherwise provided in this section and section 101 of Public Law 111-226. Such allocation shall not be adjusted in the final calculation of state aid pursuant to section 79-1065. Such allocation shall be included in the total state aid which may be adjusted pursuant to section 79-1065. Expenditures of such allocation shall be considered expenditures from the general fund of the school district and shall be included in general fund operating expenditures.

**Source:** Laws 2011, LB18, § 11.

**79-1029 Budget authority for general fund budget of expenditures; Class II, III, IV, V, or VI district may exceed; procedure.**

A Class II, III, IV, V, or VI district may exceed the budget authority for the general fund budget of expenditures prescribed in section 79-1023 by an amount approved by a majority of legal voters voting on the issue at a primary, general, or special election called for such purpose upon the recommendation of the board or upon the receipt by the county clerk or election commissioner of a petition requesting an election, signed by at least five percent of the legal voters of the district. The recommendation of the board or the petition of the legal voters shall include the amount by which the board would increase its general fund budget of expenditures for the ensuing school year over and above the budget authority for the general fund budget of expenditures prescribed in section 79-1023. The county clerk or election commissioner shall place the question on the primary or general election ballot or call for a special election on the issue after the receipt of such board recommendation or legal voter petition. The election shall be held pursuant to the Election Act or section 77-3444, and all costs for a special election shall be paid by the district. A vote to exceed the budget authority for the general fund budget of expenditures prescribed in section 79-1023 may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

**Source:** Laws 1990, LB 1059, § 20; Laws 1991, LB 511, § 85; Laws 1992, LB 245, § 90; Laws 1994, LB 76, § 608; Laws 1996, LB 299, § 31; R.S.1943, (1994), § 79-3820; Laws 1996, LB 900, § 675; Laws 1997, LB 345, § 29; Laws 1998, LB 989, § 12; Laws 1999, LB 813, § 28; Laws 2000, LB 1213, § 1; Laws 2003, LB 67, § 19; Laws 2008, LB988, § 47; Laws 2011, LB235, § 22.

**Cross References**

Election Act, see section 32-101.

**79-1030 Unused budget authority for general fund budget of expenditures; carried forward; limitation.**

A Class II, III, IV, V, or VI district may choose not to increase its general fund budget of expenditures by the full amount of budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023. In such cases, the department shall calculate the amount of unused budget authority which shall be carried forward to future budget years. The amount of unused budget authority that may be used by a district in a single school fiscal year to increase its general fund budget of expenditures above the budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 shall be limited to two percent of the difference of the general fund budget of expenditures minus the sum of special grant funds, the special education budget of expenditures, and exceptions pursuant to subsection (1) of section 79-1028.01 for the immediately preceding school fiscal year.

**Source:** Laws 1990, LB 1059, § 21; R.S.1943, (1994), § 79-3821; Laws 1996, LB 900, § 676; Laws 1998, LB 989, § 13; Laws 1998, Spec. Sess., LB 1, § 32; Laws 2006, LB 1024, § 91; Laws 2010, LB1071, § 23; Laws 2011, LB235, § 23.

**79-1031 Department; annual estimate required.**

The department, with assistance from the Property Tax Administrator, the Legislative Fiscal Analyst, and the budget division of the Department of Administrative Services, shall annually, on or before November 15, provide an estimate of the necessary funding level for the next school fiscal year under the Tax Equity and Educational Opportunities Support Act to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature.

**Source:** Laws 1990, LB 1059, § 22; Laws 1991, LB 511, § 86; Laws 1992, LB 245, § 91; Laws 1993, LB 348, § 72; R.S.1943, (1994), § 79-3822; Laws 1996, LB 900, § 677; Laws 1996, LB 1050, § 40; Laws 1997, LB 401, § 4; Laws 1997, LB 710, § 16; Laws 1997, LB 806, § 53; Laws 1998, Spec. Sess., LB 1, § 33; Laws 1999, LB 149, § 14.

#### **79-1031.01 Appropriations Committee; duties.**

The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid that will be certified to school districts on or before April 10, 2014, and on or before March 1 of each year thereafter for each ensuing school fiscal year in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

**Source:** Laws 1997, LB 710, § 17; Laws 1997, LB 806, § 54; Laws 1998, Spec. Sess., LB 1, § 34; Laws 1999, LB 149, § 15; Laws 2002, LB 898, § 14; Laws 2005, LB 126, § 51; Referendum 2006, No. 422; Laws 2007, LB21, § 6; Laws 2008, LB988, § 48; Laws 2009, LB61, § 5; Laws 2009, LB545, § 22; Laws 2009, LB548, § 5; Laws 2010, LB711, § 6; Laws 2010, LB1071, § 24; Laws 2011, LB18, § 13; Laws 2012, LB633, § 5; Laws 2013, LB408, § 4; Laws 2014, LB838, § 4.  
Effective date February 27, 2014.

#### **79-1032 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**79-1033 State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments.**

(1) Except as otherwise provided in the Tax Equity and Educational Opportunities Support Act, state aid payable pursuant to the act for each school fiscal year shall be based upon data found in applicable reports for the most recently available complete data year. The annual financial reports and the annual statistical summary of all school districts shall be submitted to the Commissioner of Education pursuant to the dates prescribed in section 79-528. If a school district fails to timely submit its reports, the commissioner, after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the act be withheld until such time as the reports are received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such reports. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of state aid and property tax receipts allocated to the school district by the learning community

coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the school fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031.

(2) A district which receives, or has received in the most recently available complete data year or in either of the two school fiscal years preceding the most recently available complete data year, federal funds in excess of twenty-five percent of its general fund budget of expenditures may apply for early payment of state aid paid pursuant to the act when such federal funds are not received in a timely manner. Such application may be made at any time by a district suffering such financial hardship and may be for any amount up to fifty percent of the remaining amount to which the district is entitled during the current school fiscal year. The state board may grant the entire amount applied for or any portion of such amount if the state board finds that a financial hardship exists in the district. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district. For purposes of this subsection, financial hardship means a situation in which income to a district is exceeded by liabilities to such a degree that if early payment is not received it will be necessary for the district to discontinue vital services or functions.

**Source:** Laws 1990, LB 1059, § 24; Laws 1991, LB 511, § 88; Laws 1992, LB 245, § 93; Laws 1992, LB 1001, § 44; Laws 1993, LB 348, § 73; Laws 1994, LB 1290, § 9; R.S.1943, (1994), § 79-3824; Laws 1996, LB 900, § 679; Laws 1997, LB 710, § 18; Laws 1998, Spec. Sess., LB 1, § 36; Laws 1999, LB 272, § 94; Laws 2006, LB 1024, § 92; Laws 2009, LB392, § 12.

#### (b) SCHOOL FUNDS

##### **79-1034 School funds; collection of fines and other school money; duties of county treasurer.**

The county treasurer shall collect or cause to be collected the fines and all money for school purposes in his or her county. The county treasurer shall pay over to the State Treasurer all funds and money, from whatever source derived, belonging to the general school fund in his or her hands and make a settlement thereof with the State Treasurer.

**Source:** Laws 1881, c. 78, subdivision XI, § 2, p. 368; R.S.1913, § 6929; C.S.1922, § 6512; C.S.1929, § 79-2001; R.S.1943, § 79-2001; Laws 1949, c. 256, § 376, p. 816; Laws 1965, c. 459, § 23, p. 1463; R.S.1943, (1994), § 79-1301; Laws 1996, LB 900, § 680; Laws 2008, LB914, § 25; Laws 2014, LB792, § 1.  
Effective date July 18, 2014.

##### **79-1035 School funds; apportionment by Commissioner of Education; basis.**

(1)(a) The State Treasurer shall, each year on or before the third Monday in January, make a complete exhibit of all money belonging to the permanent school fund and the temporary school fund as returned to him or her from the several counties, together with the amount derived from other sources, and deliver such exhibit duly certified to the Commissioner of Education.

(b) Beginning in 2016 and each year thereafter, the exhibit required in subdivision (1)(a) of this section shall include a separate accounting, not to exceed an amount of ten million dollars, of the income from solar and wind agreements on school lands. The Board of Educational Lands and Funds shall provide the State Treasurer with the information necessary to make the exhibit required by this subsection. Separate accounting shall not be made for income from solar or wind agreements on school lands that exceeds the sum of ten million dollars.

(2) On or before February 25 following receipt of the exhibit from the State Treasurer pursuant to subsection (1) of this section, the Commissioner of Education shall make the apportionment of the temporary school fund to each school district as follows: From the whole amount there shall be paid to those districts in which there are school or saline lands, which lands are used for a public purpose, an amount in lieu of tax money that would be raised if such lands were taxable, to be fixed in the manner prescribed in section 79-1036; and the remainder shall be apportioned to the districts according to the pro rata enumeration of children who are five through eighteen years of age in each district last returned from the school district. The calculation of apportionment for each school fiscal year shall include any corrections to the prior school fiscal year's apportionment.

(3) The Commissioner of Education shall certify the amount of the apportionment of the temporary school fund as provided in subsection (2) of this section to the Director of Administrative Services. The Director of Administrative Services shall draw a warrant on the State Treasurer in favor of the various districts for the respective amounts so certified by the Commissioner of Education.

(4) For purposes of this section, agreement means any lease, easement, covenant, or other such contractual arrangement.

**Source:** Laws 1881, c. 78, subdivision XI, § 3, p. 369; R.S.1913, § 6930; Laws 1915, c. 122, § 1, p. 280; C.S.1922, § 6513; C.S.1929, § 79-2002; Laws 1933, c. 144, § 3, p. 558; C.S.Supp.,1941, § 79-2002; R.S.1943, § 79-2002; Laws 1945, c. 210, § 1, p. 622; Laws 1949, c. 256, § 377, p. 817; Laws 1957, c. 359, § 1, p. 1217; Laws 1963, c. 493, § 1, p. 1575; Laws 1971, LB 1002, § 1; Laws 1989, LB 487, § 9; Laws 1990, LB 1090, § 22; Laws 1994, LB 858, § 10; R.S.1943, (1994), § 79-1302; Laws 1996, LB 900, § 681; Laws 1997, LB 345, § 30; Laws 1997, LB 710, § 19; Laws 1999, LB 272, § 95; Laws 2001, LB 797, § 31; Laws 2010, LB1014, § 4; Laws 2012, LB828, § 20.

Method and manner of apportionment for benefit of common schools is provided. State ex rel. Ebke v. Board of Educational Lands & Funds, 159 Neb. 79, 65 N.W.2d 392 (1954).

#### **79-1035.01 Permanent school fund; use.**

The permanent school fund is the fund described in Article VII, sections 7 and 8, of the Constitution of Nebraska, the principal of which shall be held and

invested in perpetuity by the state in trust for the support of its common schools. The annual interest and other income, but not the principal, is subject to use for the support and maintenance of the common schools in each public school district of the state as the Legislature provides in accordance with Article VII, section 9, of the Constitution of Nebraska.

**Source:** Laws 1997, LB 345, § 31.

**79-1035.02 Temporary school fund; use.**

The temporary school fund is the holding fund to which the interest, dividends, and any other income from the permanent school fund, the net income from the school lands, and the money from all other sources required or provided by law are credited as described in Article VII, section 9, of the Constitution of Nebraska. The entire balance of the temporary school fund, including all interest and any other income therefrom, shall be exclusively used for the support and maintenance of the common schools in each public school district in the state as the Legislature provides, in accordance with Article VII, section 9, of the Constitution of Nebraska, and shall be distributed to each public school district annually.

**Source:** Laws 1997, LB 345, § 32.

**79-1035.03 School lands, defined.**

School lands are those lands owned or acquired by the state in trust for the support of its common schools as such lands are described in Article VII, section 6, of the Constitution of Nebraska.

**Source:** Laws 1997, LB 345, § 33.

**79-1036 School funds; public lands; amount in lieu of tax; reappraisal; appeal.**

(1) In making the apportionment under section 79-1035, the Commissioner of Education shall distribute from the school fund for school purposes, to any and all learning communities and school districts which are not members of a learning community, in which there are situated school lands which have not been sold and transferred by deed or saline lands owned by the state, which lands are being used for a public purpose, an amount in lieu of tax money that would be raised by school district levies and learning community common levies for which the proceeds are distributed to member school districts pursuant to sections 79-1073 and 79-1073.01 if such lands were taxable, to be ascertained in accordance with subsection (2) of this section, except that:

(a) For Class I districts or portions thereof which are affiliated and in which there are situated school or saline lands, 38.6207 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the affiliated school system tax levy computed pursuant to section 79-1077, shall be distributed to the affiliated high school district and the remainder shall be distributed to the Class I district;

(b) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades nine through twelve and in which there are situated school or saline lands, 38.6207 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be

distributed to the Class VI district and the remainder shall be distributed to the Class I district;

(c) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades seven through twelve and in which there are situated school or saline lands, 55.1724 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be distributed to the Class VI district and the remainder shall be distributed to the Class I district; and

(d) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades six through twelve and in which there are situated school or saline lands, 62.0690 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be distributed to the Class VI district and the remainder shall be distributed to the Class I district.

(2) The county assessor shall certify to the Commissioner of Education the tax levies of each school district and learning community in which school land or saline land is located and the last appraised value of such school land, which value shall be the same percentage of the appraised value as the percentage of the assessed value is of market value in subsection (2) of section 77-201 for the purpose of applying the applicable tax levies for each district and learning community in determining the distribution to the districts of such amounts. The school board of any school district and the learning community coordinating council of any learning community in which there is located any leased or undeeded school land or saline land subject to this section may appeal to the Board of Educational Lands and Funds for a reappraisal of such school land if such school board or learning community coordinating council deems the land not appraised in proportion to the value of adjoining land of the same or similar value. The Board of Educational Lands and Funds shall proceed to investigate the facts involved in such appeal and, if the contention of the school board or learning community coordinating council is correct, make the proper reappraisal. The value calculation in this subsection shall be used by the Commissioner of Education for making distributions in each school fiscal year.

**Source:** Laws 1881, c. 78, subdivision VIII, § 9, p. 364; R.S.1913, § 6906; Laws 1921, c. 82, § 1, p. 296; C.S.1922, § 6482; Laws 1929, c. 187, § 1, p. 651; C.S.1929, § 79-1609; Laws 1933, c. 144, § 2, p. 557; C.S.Supp.,1941, § 79-1609; Laws 1943, c. 200, § 1, p. 670; R.S.1943, § 79-1612; Laws 1947, c. 282, § 1, p. 890; Laws 1949, c. 256, § 378, p. 818; Laws 1957, c. 359, § 2, p. 1218; Laws 1979, LB 187, § 246; Laws 1982, LB 572, § 1; Laws 1983, LB 39, § 1; Laws 1990, LB 1090, § 23; Laws 1991, LB 511, § 61; Laws 1992, LB 245, § 66; Laws 1993, LB 839, § 5; Laws 1994, LB 858, § 11; R.S.1943, (1994), § 79-1303; Laws 1996, LB 900, § 682; Laws 1997, LB 270, § 104; Laws 1998, Spec. Sess., LB 1, § 37; Laws 1999, LB 272, § 96; Laws 2001, LB 797, § 32; Laws 2003, LB 394, § 8; Laws 2010, LB1070, § 8.

(1) Each county treasurer shall add (a) all money received by the county treasurer of his or her county on account of fines and licenses, (b) the proceeds from the sale of schoolhouses, sites, or other property of a school district, and (c) all unexpended balances of proceeds of taxes levied by a district when the district has been taken by the United States for any defense, flood control, irrigation, or war project.

(2) The sum total referred to in subsection (1) of this section shall be distributed to the several districts of the county pro rata according to the enumeration of those children who are five through eighteen years of age for which the district is obligated to report on the census last returned by the districts.

**Source:** Laws 1881, c. 78, subdivision XI, § 4, p. 369; R.S.1913, § 6931; Laws 1915, c. 122, § 2, p. 281; Laws 1917, c. 127, § 1, p. 308; C.S.1922, § 6514; C.S.1929, § 79-2003; Laws 1943, c. 197, § 3, p. 664; R.S.1943, § 79-2003; Laws 1949, c. 265, § 1, p. 879; Laws 1949, c. 256, § 379, p. 818; Laws 1951, c. 276, § 12, p. 933; Laws 1953, c. 291, § 8, p. 992; Laws 1961, c. 409, § 1, p. 1227; Laws 1963, c. 493, § 2, p. 1576; Laws 1971, LB 1002, § 2; Laws 1977, LB 487, § 2; Laws 1985, LB 633, § 11; Laws 1990, LB 1090, § 24; Laws 1991, LB 511, § 62; Laws 1992, LB 245, § 67; R.S.1943, (1994), § 79-1304; Laws 1996, LB 900, § 683; Laws 1999, LB 272, § 97.

This section provides the basis for distribution of school fund.  
School Dist. No. 54 of Douglas County v. School Dist. of  
Omaha, 171 Neb. 769, 107 N.W.2d 744 (1961).

### **79-1038 School funds; apportionment; formation of new district; when eligible.**

When a district is formed from other districts where during the preceding school year school has been kept open the term required by law, such new district will be held and deemed to have had school the lawful time and apportionment shall be made to it accordingly.

**Source:** Laws 1881, c. 78, subdivision XI, § 5, p. 370; R.S.1913, § 6932; C.S.1922, § 6515; C.S.1929, § 79-2004; R.S.1943, § 79-2004; Laws 1949, c. 256, § 380, p. 819; R.S.1943, (1994), § 79-1305; Laws 1996, LB 900, § 684.

### **79-1039 School funds; apportionment; duties.**

After making the apportionment pursuant to section 79-1037, the county treasurer shall (1) enter the apportionment immediately in a book kept for that purpose, (2) furnish the secretary of each school district in the county a certificate showing the amount due such district, and (3) distribute the funds to each district in the amount due such district for its share of the apportionment.

**Source:** Laws 1881, c. 78, subdivision XI, § 7, p. 370; R.S.1913, § 6934; C.S.1922, § 6517; C.S.1929, § 79-2006; R.S.1943, § 79-2006; Laws 1949, c. 256, § 381, p. 820; Laws 1951, c. 288, § 1, p. 955; Laws 1989, LB 487, § 10; Laws 1990, LB 1090, § 25; R.S.1943, (1994), § 79-1306; Laws 1996, LB 900, § 685; Laws 1999, LB 272, § 98.

**79-1040 School funds; apportionment; county treasurer; no compensation allowed.**

County treasurers shall not charge for receiving and disbursing the school apportionment.

**Source:** Laws 1881, c. 78, subdivision XI, § 8, p. 370; R.S.1913, § 6935; C.S.1922, § 6518; C.S.1929, § 79-2007; R.S.1943, § 79-2007; Laws 1949, c. 256, § 382, p. 820; Laws 1990, LB 1090, § 26; R.S.1943, (1994), § 79-1307; Laws 1996, LB 900, § 686.

**79-1041 County treasurer; distribute school funds; when.**

Each county treasurer of a county with territory in a learning community shall distribute any funds collected by such county treasurer from the common general fund levy and the common building fund levy of such learning community to each member school district pursuant to sections 79-1073 and 79-1073.01 at least once each month.

Each county treasurer shall, upon request of a majority of the members of the school board or board of education in any school district, at least once each month distribute to the district any funds collected by such county treasurer for school purposes.

**Source:** Laws 1976, LB 803, § 1; R.S.1943, (1994), § 79-1307.01; Laws 1996, LB 900, § 687; Laws 2009, LB392, § 13.

**79-1042 School funds; embezzlement by school district treasurer.**

Except as provided by section 79-1043, school district treasurers shall not lend or use any part of the school money which may be in their hands under penalty of fine and imprisonment as provided regarding embezzlement under sections 28-509 to 28-518.

**Source:** Laws 1881, c. 78, subdivision XI, § 9, p. 370; R.S.1913, § 6936; C.S.1922, § 6519; C.S.1929, § 79-2008; R.S.1943, § 79-2008; Laws 1949, c. 256, § 383, p. 820; Laws 1959, c. 382, § 5, p. 1326; R.S.1943, (1994), § 79-1308; Laws 1996, LB 900, § 688.

**79-1043 School funds; investment; interest; repurchase agreements; securities; how held.**

(1) Any school district may, by and with the consent of the school board or board of education of the school district, invest the funds of the school district in securities the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Every school district having invested in such securities shall deliver the same as funds of the office. The interest received on any investments authorized by this section shall be credited to the fund from which the money was taken to make the investment.

(2) The securities referred to in subsection (1) of this section may be invested in through repurchase agreements. Each repurchase agreement shall require that the items purchased through the repurchase agreement be subject to repurchase from the school district upon demand by the treasurer of the school district. No such repurchase agreement shall be entered into until the treasurer of the school district who proposes to enter into the repurchase agreement has

received a perfected security interest in the securities as collateral for their prompt repurchase.

(3) All securities referred to in this section or in the Class V School Employees Retirement Act may be held and evidenced by book entry account rather than through the holding and retaining of original certificates, indentures, or governing instruments for such securities.

**Source:** Laws 1957, c. 360, § 1, p. 1219; Laws 1971, LB 291, § 1; Laws 1987, LB 30, § 1; Laws 1989, LB 379, § 1; Laws 1994, LB 1310, § 12; R.S.1943, (1994), § 79-1308.01; Laws 1996, LB 900, § 689; Laws 1998, LB 497, § 28.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**79-1044 Forest reserve funds; distribution for schools and roads; how made.**

The forest reserve funds, annually paid into the state treasury by the United States Government under an act of Congress approved June 30, 1906, shall be distributed among the counties of the state entitled to the same for the benefit of the public schools and the public roads of such counties based upon information provided by the United States Department of the Interior under the direction of the Commissioner of Education in the following manner:

(1) The State Treasurer shall annually on the first Monday in July certify to the commissioner the amount of money received from the United States Government as Nebraska's proportionate share of the income from the forest reserves within the state for the most recent complete fiscal year; and

(2) The commissioner shall, on or before August 5, make apportionment of such funds to such counties according to the number of acres of forest reserve in each county and certify the apportionment of each county to the county treasurer of the proper county and to the Director of Administrative Services. The director shall draw a warrant on the State Treasurer in favor of the various counties for the amount specified by the commissioner.

**Source:** Laws 1907, c. 143, § 1, p. 453; R.S.1913, § 6938; C.S.1922, § 6521; C.S.1929, § 79-2010; R.S.1943, § 79-2010; Laws 1947, c. 284, § 1, p. 892; Laws 1949, c. 256, § 384, p. 820; R.S.1943, (1994), § 79-1309; Laws 1996, LB 900, § 690; Laws 1999, LB 272, § 99; Laws 2001, LB 797, § 33; Laws 2011, LB333, § 11.

**79-1045 Forest reserve funds; apportionment; how made.**

The county treasurer shall, within twenty days after receiving the apportionment under section 79-1044, apportion the amount as follows: (1) To each school district lying wholly or partly within any such forest reserve, an amount equal to the actual per pupil cost for each pupil actually residing in that part of the district which is within such forest reserve, but this apportionment per pupil shall not exceed the average annual cost per pupil, based on average daily attendance within that county; and (2) of the remaining amount, one-fifth to the public road fund of the county, one-fifth equally to the several school districts in the county, and the remaining three-fifths to the several school districts in the county pro rata according to the enumeration of scholars last returned by the districts. The county treasurer shall, with the approval of the county board, have authority to retain the money to be allocated under this subdivision to

Class I, II, and III school districts of the county to be used for the establishment and support of a county circulating library for Class I, II, and III school districts. A school district which has failed to sustain a school taught by a legally qualified teacher for the length of time required by law shall not be entitled to receive any portion of the Forest Reserve Fund.

**Source:** Laws 1907, c. 143, § 2, p. 453; R.S.1913, § 6939; C.S.1922, § 6522; C.S.1929, § 79-2011; R.S.1943, § 79-2011; Laws 1949, c. 256, § 385, p. 821; Laws 1953, c. 312, § 1, p. 1037; Laws 1963, c. 494, § 1, p. 1578; Laws 1965, c. 529, § 1, p. 1662; R.S.1943, (1994), § 79-1310; Laws 1996, LB 900, § 691; Laws 1999, LB 272, § 100.

#### **79-1046 Forest reserve funds; apportionment; certification to districts.**

The county treasurer shall, immediately after making the apportionment under section 79-1044, (1) enter the apportionment in a book kept for that purpose, (2) furnish the secretary of each district in the county a certificate showing the amount due such district, and (3) distribute the funds to each district in the amount due such district for its share of the Forest Reserve Fund.

**Source:** Laws 1907, c. 143, § 3, p. 454; R.S.1913, § 6940; C.S.1922, § 6523; C.S.1929, § 79-2012; R.S.1943, § 79-2012; Laws 1949, c. 256, § 386, p. 821; R.S.1943, (1994), § 79-1311; Laws 1996, LB 900, § 692; Laws 1999, LB 272, § 101.

#### **79-1047 Public grazing funds; distribution to counties; how made.**

The public grazing funds, annually paid to the state treasury by the United States Government under the federal Taylor Grazing Act, 43 U.S.C. 315i, as such act existed on May 8, 2001, shall be distributed among the counties of the state entitled to the same for the benefit of the school districts of such counties based upon information provided by the United States Department of the Interior under the direction of the Commissioner of Education in the following manner:

(1) The State Treasurer shall annually on the first Monday in July certify to the commissioner the amount of money received from the United States Government as Nebraska's proportionate share of the income from the grazing lands within the state for the most recent complete fiscal year; and

(2) The commissioner shall, on or before August 5, make apportionment of such funds to such counties according to the number of acres of grazing land in each county and certify the apportionment of each county to the county treasurer of the proper county and to the Director of Administrative Services. The director shall draw a warrant on the State Treasurer in favor of the various counties for the amount so specified by the Commissioner of Education.

**Source:** Laws 1947, c. 300, § 1, p. 916; R.S.Supp.,1947, § 79-2013; Laws 1949, c. 256, § 387, p. 821; Laws 1951, c. 289, § 1, p. 956; R.S.1943, (1994), § 79-1312; Laws 1996, LB 900, § 693; Laws 1999, LB 272, § 102; Laws 2001, LB 797, § 34; Laws 2011, LB333, § 12.

#### **79-1048 Public grazing funds; distribution.**

The county treasurer shall, within twenty days after receiving the apportionment under section 79-1047, distribute the funds to the school districts in the county from which the public grazing funds were derived in proportion to the respective acreage of grazing lands in each district within the county.

**Source:** Laws 1947, c. 300, § 2, p. 917; R.S.Supp.,1947, § 79-2014; Laws 1949, c. 266, § 1, p. 880; Laws 1949, c. 256, § 388, p. 822; R.S.1943, (1994), § 79-1313; Laws 1996, LB 900, § 694; Laws 1999, LB 272, § 103.

**79-1049 Flood control funds; distribution for schools and roads; how made.**

The funds paid to the State Treasurer by the United States Government under the federal Flood Control Act, 33 U.S.C. 701c-3, on account of the leasing of lands acquired by the United States for flood control purposes in the State of Nebraska, shall be distributed among the counties of the state entitled to the same for the benefit of the public schools and public roads of such counties.

**Source:** Laws 1949, c. 251, § 1, p. 683; R.S.1943, (1994), § 79-1315; Laws 1996, LB 900, § 695.

**79-1050 Flood control funds; counties entitled to share.**

The county in which the land described in section 79-1049 is situated on which lease rentals are paid shall be entitled to receive the lease rentals for the benefit of the public schools and public roads of the county. When the land is situated in more than one county, the distributive share to each county from the lease rentals shall be proportional to such land's area within the county.

**Source:** Laws 1949, c. 251, § 2, p. 683; R.S.1943, (1994), § 79-1316; Laws 1996, LB 900, § 696.

**79-1051 Flood control funds; apportionment by Commissioner of Education.**

The distribution of the funds received by the State Treasurer under section 79-1049 shall be made based upon information provided by the United States Department of the Interior under the direction of the Commissioner of Education in the following manner:

(1) The State Treasurer shall annually on the first Monday in July certify to the commissioner the amount of money received from the United States Government as Nebraska's proportionate share of the income from the leasing of lands acquired by the United States for flood control purposes; and

(2) The commissioner shall, on or before August 5, make apportionment of such fund to the counties entitled thereto in accordance with section 79-1050 and certify the apportionment of each county to the county treasurer of the proper county and to the Director of Administrative Services. The director shall draw a warrant on the State Treasurer in favor of the various counties for the amount specified by the commissioner.

**Source:** Laws 1949, c. 251, § 3, p. 683; R.S.1943, (1994), § 79-1317; Laws 1996, LB 900, § 697; Laws 1999, LB 272, § 104; Laws 2001, LB 797, § 35; Laws 2011, LB333, § 13.

**79-1052 Flood control funds; apportionment for schools and roads.**

The county treasurer shall, within twenty days after receiving the apportionment under section 79-1051, apportion the amount as follows: One-fifth of the

whole amount to the public road fund of the county and the remaining four-fifths to the school districts in the county from which the rental was derived in proportion to the respective acreage of lands leased in each school district within the county by the United States Government which have been acquired for flood control purposes. The county treasurer shall determine the amount each district is to receive and make apportionment thereof.

**Source:** Laws 1949, c. 251, § 4, p. 684; R.S.1943, (1994), § 79-1318; Laws 1996, LB 900, § 698; Laws 1999, LB 272, § 105.

**79-1053 Flood control funds; certification to districts.**

The county treasurer shall, immediately after making the apportionment under section 79-1052, enter the apportionment in a book kept for that purpose. The county treasurer shall also furnish the school board secretary in each district in the county a certificate showing the amount due such district, which amount shall be subject to the order of the school district, through its proper officers, on the county treasurer.

**Source:** Laws 1949, c. 251, § 5, p. 684; R.S.1943, (1994), § 79-1319; Laws 1996, LB 900, § 699; Laws 1999, LB 272, § 106.

**79-1054 Repealed. Laws 1997, LB 347, § 59.**

**79-1055 Repealed. Laws 1997, LB 347, § 59.**

**79-1056 Repealed. Laws 1997, LB 347, § 59.**

**79-1057 Repealed. Laws 1997, LB 347, § 59.**

**79-1058 Repealed. Laws 1997, LB 347, § 59.**

**79-1059 Repealed. Laws 1997, LB 347, § 59.**

**79-1060 Repealed. Laws 1997, LB 347, § 59.**

**79-1061 Repealed. Laws 1997, LB 347, § 59.**

**79-1062 Federal Mineral Leasing Act funds; disposition.**

All money paid semiannually to the State Treasurer by the United States Government under the federal Mineral Leasing Act shall be placed in the permanent school fund, subject to the laws governing such permanent school fund.

**Source:** Laws 1953, c. 260, § 1, p. 870; R.S.1943, (1994), § 79-1328; Laws 1996, LB 900, § 708.

**79-1063 State Department of Education Trust Fund; created; use; emergency cash fund; created; investment.**

The State Department of Education Trust Fund is created. The fund shall consist of all property, real or personal, acquired by donation, devise, or bequest by the Nebraska School for the Visually Handicapped or the Nebraska Center for the Education of Children who are Blind or Visually Impaired and all money derived from the sale or lease of property donated, devised, or bequeathed to the school or center. Out of money in such fund not restricted from such use by the terms of the donation, devise, or bequest, an emergency

cash fund of not to exceed five hundred dollars shall be established for immediate and unusual needs as may arise. Such emergency cash fund shall be reimbursed from the State Department of Education Trust Fund for any expenditures.

Any money in the State Department of Education Trust 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, subject to the following exceptions: (1) No such investment need be made if, according to the terms of the donation, devise, or bequest, the State Board of Education is not limited to the expenditure of only the interest or income derived from the donation, devise, or bequest; and (2) no such investment shall be made if the will or instrument making such donation, devise, or bequest makes other provisions or directions as to investment and in such cases the state investment officer, acting for the State Board of Education, shall comply with the provisions or directions of such will or instrument if such provisions or directions are not inconsistent with the laws of this state.

**Source:** Laws 1967, c. 528, § 1, p. 1752; Laws 1969, c. 584, § 81, p. 2394; Laws 1976, LB 758, § 1; Laws 1986, LB 1177, § 37; Laws 1995, LB 7, § 89; R.S.Supp.,1995, § 79-1345; Laws 1996, LB 900, § 709; Laws 1999, LB 813, § 29.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**79-1064 State Department of Education Cash Fund; created; use; investment.**

The State Department of Education Cash Fund is created. Except as to other revenue the disposition of which is otherwise provided for, all sums of money received by the State Department of Education from the sale of goods and materiel, fees from any training program or services rendered, and any revenue such department may receive from any other source shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund. The State Treasurer shall disburse such amounts in the fund as are available and considered incident to the administration and operation of the State Department of Education. Money in the State Department of Education Cash Fund may be transferred to the General Fund at the direction of the Legislature. All disbursements for the State Department of Education Cash Fund shall be made upon vouchers issued by the State Department of Education and warrants drawn by the Director of Administrative Services. Any money in the State Department of Education 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 1973, LB 544, § 1; Laws 1983, LB 469, § 5; R.S.1943, (1994), § 79-1346; Laws 1996, LB 900, § 710.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**79-1065 Financial support to school districts; adjustments authorized; records.**

The State Department of Education shall adjust payments provided under Chapter 79 to school districts which, after final determination, received funds not equal to the appropriate allocation for the previous school fiscal year such that the district will receive the funds to which it was finally determined to be entitled. If the total adjustment cannot be made from the funds to be provided in the current school fiscal year, the adjustment shall be prorated, with additional adjustments made to payments for future school fiscal years. The department shall maintain an accurate account and a record of the reasons the adjustments were made and the amount of such adjustments.

**Source:** Laws 1976, LB 903, § 10; Laws 1987, LB 367, § 68; Laws 1990, LB 1059, § 41; Laws 1991, LB 511, § 63; Laws 1992, LB 245, § 68; Laws 1992, LB 1001, § 30; R.S.1943, (1994), § 79-1369; Laws 1996, LB 900, § 711; Laws 1997, LB 710, § 20; Laws 1998, Spec. Sess., LB 1, § 38.

#### **79-1065.01 Financial support to school districts; lump-sum payments.**

If the adjustment under section 79-1065 results in a school district being entitled to the payment of additional funds, the district may apply to the State Department of Education for a lump-sum payment for any amount up to one hundred percent of the adjustment, except that when a school district is to receive a lump-sum payment pursuant to section 79-1022, one hundred percent of the adjustment shall be paid as one lump-sum payment on the last business day of December during the ensuing school fiscal year. The department shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments pursuant to section 79-1022. The department shall make such payment in a lump sum not later than the last business day of September of the year in which the final determination under this section is made.

**Source:** Laws 2000, LB 1213, § 2; Laws 2009, LB549, § 34.

#### **79-1065.02 State aid payments; adjustments; application; calculation.**

(1) State aid payments shall be adjusted to reflect transfers of property due to annexation, to any dissolution of a Class I school district, and to any reorganization involving one or more Class I school districts.

(2) This section applies whenever:

(a) A Class I school district dissolves or reorganizes in such a manner that the parcels of property making up the Class I district prior to the dissolution or reorganization which were affiliated with a Class II, III, IV, or V school district do not become part of the Class II, III, IV, or V school district with which such parcels of property were affiliated; or

(b) Property within the boundaries of a Class II, III, IV, V, or VI school district is transferred to another school district due to a change in the school district boundaries in response to annexation of the transferred property by a city or village.

(3) To qualify for additional state aid pursuant to this section, the school district from which property is being transferred shall apply on a form prescribed by the State Department of Education on or before August 20 preceding the first school fiscal year for which the property will not be available for taxation for the school district's general fund levy. On or before such deadline,

the applicant school district shall send copies of the application to the high school districts of the local systems receiving valuation in the transfer. For purposes of this section, property is deemed transferred from the school district whether the property was within the boundaries of the school district or the property was affiliated with the school district.

(4) Upon receipt of the application, the department, with the assistance of the Property Tax Administrator, shall calculate the amount of additional state aid, if any, that the local system, as defined in section 79-1003, for the applicant school district would have received for such school fiscal year if the adjusted valuation for the transferred property had not been included in the adjusted valuation of such local system for the calculation of state aid for such school fiscal year. On or before September 20 of such school fiscal year, the department shall certify to the applicant school district the amount of additional state aid, if any, the district will receive. Except as otherwise provided in this subsection, if such applicant school district receives a lump-sum payment pursuant to subsection (2) of section 79-1022, such lump-sum payment shall be increased by the amount of additional state aid. Except as otherwise provided in this subsection, if such applicant school district does not receive a lump-sum payment pursuant to such subsection, state aid payments shall be increased by one-tenth of the amount of additional state aid for each of the ten state aid payments for such school fiscal year. If a portion of the total reduction calculated pursuant to subsection (5) of this section for local systems receiving valuation in the transfer of property that is the subject of the application is delayed until future years, the additional state aid to be paid in the school fiscal year described in subsection (3) of this section shall be reduced by the amount of the total reduction that is delayed until future years. The amount of the reduction shall be paid as additional aid in the next school fiscal year.

(5) The state aid payments shall be reduced for the high school district of each receiving local system. An amount equal to the additional state aid calculated pursuant to subsection (4) of this section for the local system of an applicant school district shall be attributed to the local systems receiving valuation in such transfer based upon the ratio of the adjusted valuation received by each local system divided by the total adjusted valuation transferred from the applicant school district. If such high school district receives a lump-sum payment pursuant to subsection (2) of section 79-1022, such lump-sum payment shall be reduced by the amount attributed to the receiving local system. If the high school district of a receiving local system does not receive a lump-sum payment pursuant to such subsection, state aid payments shall be reduced by one-tenth of the amount attributed to such receiving local system for each of the ten state aid payments for such school fiscal year. If the total reduction is greater than the total state aid payments for such school fiscal year, the remainder shall be subtracted from state aid payments in future school fiscal years until the total reduction has been subtracted from state aid payments. On or before September 20 of such school fiscal year, the department shall certify to the high school district of the receiving local system the amount of the reduction in state aid.

(6) For purposes of the final calculation of state aid pursuant to section 79-1065, the adjusted valuation of the property that was transferred shall also be transferred for purposes of adjusted valuation for the final calculation of state aid. For determining adjustments in state aid pursuant to section 79-1065, the final calculation of state aid shall be compared to the state aid certified for

such school fiscal year combined with any adjustments in state aid payments and transfers from other districts pursuant to this section.

**Source:** Laws 2005, LB 198, § 1.

**79-1066 School districts; financial support from an entity constructing an electric generating facility; legislative findings.**

All ratepayers of public power districts, public power and irrigation districts, municipalities, electric cooperatives, electric membership corporations, or other entities which construct electric generating facilities benefit from such construction, and due to the influx of large numbers of workers and their families during certain periods of such construction, residents in areas surrounding such electric generating facility sites may sustain additional tax burdens for the education of the workers' children. It is the public policy of this state that, in order to promote the general health, welfare, and quality of education, any public power district, public power and irrigation district, municipality, electric cooperative, electric membership corporation, or other entity engaged in such construction may use its funds for the purpose of paying money to certain school districts as provided in sections 79-1066 to 79-1069 in order to alleviate the impact resulting from such construction, and any such use of funds is hereby determined to be for a public purpose.

**Source:** Laws 1981, LB 15, § 1; Laws 1985, LB 6, § 2; R.S.1943, (1994), § 79-1371; Laws 1996, LB 900, § 712.

**79-1067 School districts; entity constructing electric generating facility; payments authorized; amount.**

If either parent of a student attending public schools in any school district is employed in the construction of an electric generating facility, as determined by the school district within one hundred fifty days after commencement of the school year, the public power district, public power and irrigation district, municipality, electric cooperative, electric membership corporation, or other entity constructing and owning such facility may pay to any such impacted school district, upon written request with certified supporting information from such school district, an amount which shall not exceed the amount derived by (1) taking the total receipts of such school district from the local property tax levy for the preceding school fiscal year, less one-half of any amount included therein which is provided for the payment of servicing bonded indebtedness on any school facility, plus depreciation at the annual rate of three percent on any school facility, (2) dividing the total thereof by the average daily membership of resident students in such school district for the preceding school fiscal year, and (3) multiplying the resulting quotient by the number of children of such employees attending such school district in the current school fiscal year.

**Source:** Laws 1981, LB 15, § 2; Laws 1992, LB 1063, § 199; Laws 1992, Second Spec. Sess., LB 1, § 170; R.S.1943, (1994), § 79-1372; Laws 1996, LB 900, § 713; Laws 1998, Spec. Sess., LB 1, § 39.

**79-1068 School districts; entity constructing electric generating facility; retroactive payments authorized.**

For each school year commencing with the 1977-78 school year which has begun or has been completed prior to February 19, 1981, a public power district, public power and irrigation district, municipality, electric cooperative,

electric membership corporation, or other entity subject to sections 79-1066 to 79-1069 may pay to any impacted school district, upon written request with certified supporting information from such school district within one hundred eighty days after February 19, 1981, an amount which shall not exceed the amount calculated in accordance with the formula set forth in section 79-1067 as applied to the applicable school year.

**Source:** Laws 1981, LB 15, § 3; Laws 1985, LB 6, § 3; R.S.1943, (1994), § 79-1373; Laws 1996, LB 900, § 714.

**79-1069 School districts; payments; conditions.**

Prior to any payment to an impacted school district as provided in sections 79-1066 to 79-1069, the governing body of the public power district, public power and irrigation district, municipality, electric cooperative, electric membership corporation, or other entity constructing and owning such electric generating facility shall find and determine that such payment will promote the general health, welfare, and quality of education and will be in the best interests of the entity in its proprietary capacity and its relations with its employees, its contractors, and the public generally.

**Source:** Laws 1981, LB 15, § 4; Laws 1985, LB 6, § 4; R.S.1943, (1994), § 79-1374; Laws 1996, LB 900, § 715.

**79-1070 Power to borrow money; conditions; authorization to accept loans from state or federal government.**

(1) Any class of school district may borrow money to the amount of seventy percent of the unexpended balance of total anticipated receipts of the general fund, special building fund, bond fund, or qualified capital purpose undertaking fund for the current school fiscal year and the following school fiscal year. Total anticipated receipts of the general fund, special building fund, bond fund, or qualified capital purpose undertaking fund for the current school fiscal year and the following school fiscal year shall mean a sum equal to the total of (a) the anticipated receipts from the current existing levy multiplied by two, (b) the anticipated receipts from the United States for the current school fiscal year and the following school fiscal year, and (c) the anticipated receipts from other sources for the current school fiscal year and the following school fiscal year.

Any class of school district may execute and deliver in evidence thereof their promissory notes which they are hereby authorized and empowered to make and negotiate, bearing a rate of interest set by the school board and maturing not more than two school fiscal years from the date thereof. Such notes, before they are negotiated, shall be presented to the treasurer of the school district and registered by him or her and shall be payable out of the funds collected by such school district in the order of their registry after the payment of prior registered warrants but prior to the payment of any warrant subsequently registered, except that if both warrants and notes are registered, the total of such registered notes and warrants shall not exceed one hundred percent of the unexpended balance of the total anticipated receipts of the general fund, special building fund, bond fund, or qualified capital purpose undertaking fund of such district for the current school fiscal year and the following school fiscal year. For the purpose of making such calculation, such total anticipated receipts shall not include any anticipated receipts against which the school district has

borrowed and issued notes pursuant to this section in either the current or the immediately preceding school fiscal year.

(2) In addition to the authority granted by subsection (1) of this section, such school districts may accept interest-free or low-interest loans from the state or federal government and may execute and deliver in evidence thereof their promissory notes maturing not more than twenty years from the date of execution.

(3) In addition to the authority granted by subsections (1) and (2) of this section, any class of school district may enter into loan agreements for the purpose of borrowing money from financial institutions, including banks, in amounts not in excess of seventy percent of the unexpended balance of their current existing levy. As evidence of such borrowing, a school district may execute and deliver one or more written loan agreements but shall not be required to execute and deliver separate promissory notes for each borrowing under such agreements. Money borrowed pursuant to such agreements shall bear interest at such rate or rates and shall become due and be repaid as provided in such agreements. Any such agreement shall provide for repayment in full at least once each school fiscal year and shall be for a term not exceeding one school fiscal year. Any such agreement shall be registered upon books kept by the treasurer of the school district, and money borrowed pursuant to such agreement shall be paid out of funds collected upon the current existing levy prior to the payment of any warrant or note registered subsequent to any such loan agreement. If a school district has any such loan agreement or agreements outstanding and has warrants or notes registered, as described in subsection (1) of this section, the total amount (a) of borrowings pursuant to such loan agreement or agreements and (b) of registered notes and warrants shall not exceed one hundred percent of the unexpended balance of the current existing levy.

(4) Nothing in this section shall be construed to exempt a school district from the terms and conditions contained in sections 10-701 to 10-716.

**Source:** Laws 1931, c. 143, § 1, p. 391; Laws 1937, c. 176, § 7, p. 699; Laws 1941, c. 168, § 1, p. 666; C.S.Supp., 1941, § 79-2523; Laws 1943, c. 204, § 2, p. 679; R.S.1943, § 79-2531; Laws 1949, c. 256, § 207, p. 759; Laws 1967, c. 539, § 1, p. 1779; Laws 1969, c. 719, § 2, p. 2747; Laws 1969, c. 51, § 120, p. 347; Laws 1978, LB 596, § 1; Laws 1981, LB 441, § 2; Laws 1985, LB 587, § 1; R.S.1943, (1987), § 79-520; Laws 1991, LB 382, § 1; Laws 1992, LB 1001, § 31; R.S.1943, (1994), § 79-1384; Laws 1996, LB 900, § 716; Laws 1997, LB 710, § 21; Laws 1998, Spec. Sess., LB 1, § 40; Laws 2003, LB 67, § 20.

#### **79-1071 Power to borrow money; how construed.**

Section 79-1070 shall be independent of and in addition to any other provisions of the laws of the State of Nebraska, and such section shall not be considered amendatory of or limited by any other laws of the State of Nebraska. Such section does not prohibit or limit the issuance of notes or borrowing by school districts in accordance with any other applicable laws of the State of

Nebraska if the school board or board of education determines to issue such notes or incur borrowings under such laws.

**Source:** Laws 1991, LB 382, § 2; R.S.1943, (1994), § 79-1385; Laws 1996, LB 900, § 717.

**79-1072 Class II, III, IV, V, or VI school district; contingency fund; authorized; use.**

The school board or board of education of any Class II, III, IV, V, or VI school district may establish a contingency fund for losses. Such contingency fund shall be established and maintained by transfers from the general fund of such school district as authorized by the school board or board of education of such school district. Disbursements from such contingency fund shall not exceed five percent of the total budgeted general fund expenditures of the school district and shall be used only for defense against losses, payment of losses, and transfer of funds to the general fund of such school district as authorized by the board.

**Source:** Laws 1989, LB 228, § 1; R.S.1943, (1994), § 79-546.01; Laws 1996, LB 900, § 718.

**79-1072.01 Repealed. Laws 2006, LB 764, § 1.**

**79-1072.02 Repealed. Laws 2006, LB 764, § 1.**

**79-1072.03 Repealed. Referendum 2006, No. 422.**

**79-1072.04 Repealed. Referendum 2006, No. 422.**

#### (c) SCHOOL TAXATION

**79-1073 General fund property tax receipts; learning community coordinating council; certification; division; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.**

On or before September 1 for each year, each learning community coordinating council shall determine the expected amounts to be distributed by the county treasurers to each member school district from general fund property tax receipts pursuant to subdivision (2)(b) of section 77-3442 and shall certify such amounts to each member school district, the county treasurer for each county containing territory in the learning community, and the State Department of Education. Such property tax receipts shall be divided among member school districts proportionally based on the difference of the school district's formula need calculated pursuant to section 79-1007.11 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the school fiscal year for which the distribution is being made.

Each time the county treasurer distributes property tax receipts from the common general fund levy to member school districts, the amount to be distributed to each district shall be proportional based on the total amounts to be distributed to each member school district for the school fiscal year. Each time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the common general fund levy for member school districts or any entity issues an in lieu of property tax reimbursement based on the

common general fund levy for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.

**Source:** Laws 2006, LB 1024, § 93; Laws 2007, LB641, § 29; Laws 2008, LB988, § 49; Laws 2008, LB1154, § 11; Laws 2009, LB392, § 14; Laws 2009, LB545, § 23; Laws 2010, LB1070, § 9.

Because the levy authorized under this section benefits all taxpayers in a learning community, which is the relevant taxing district, this section does not violate the constitutional prohibition in Neb. Const. art. VIII, sec. 4, against a commutation of taxes. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Because the levy distributed under this section is uniform throughout the entire learning community, which is the relevant

taxing district, this section does not violate the uniformity clause in Neb. Const. art. VIII, sec. 1. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

This section was enacted for substantially local purposes, and therefore, it does not violate the prohibition in Neb. Const. art. VIII, sec. 1A, against a property tax for a state purpose. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

**79-1073.01 Learning communities; special building funds; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.**

Amounts levied by learning communities for special building funds for member school districts pursuant to subdivision (2)(g) of section 77-3442 shall be distributed by the county treasurer collecting such levy proceeds to all member school districts proportionally based on the formula students used in the most recent certification of state aid pursuant to section 79-1022. Each time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the levy of a learning community for special building funds for member school districts or any entity issues an in lieu of property tax reimbursement based on the levy of a learning community for special building funds for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.

Any amounts distributed pursuant to this section shall be used by the member school districts for special building funds.

**Source:** Laws 2006, LB 1024, § 94; Laws 2007, LB641, § 30; Laws 2009, LB392, § 15; Laws 2010, LB1070, § 10.

**79-1074 Joint district or learning community; joint affiliated school system or learning community; taxable property; certification.**

(1) The county clerk of any county in which a part of a joint school district or learning community is located shall, on or before the date prescribed in section 13-509, certify the taxable valuation of all taxable property of such part of the joint district or learning community to the clerk of the headquarters county in which the schoolhouse or the administrative office of the school district or learning community is located.

(2) The county clerk of any county in which a part of a joint affiliated school system or learning community is located shall, on or before the date prescribed in section 13-509, certify the taxable valuation of all taxable property of such part of the joint affiliated school system or learning community to the clerk of the headquarters county in which the schoolhouse or the administrative office of the high school district or learning community is located.

**Source:** Laws 1907, c. 118, § 1, p. 398; Laws 1913, c. 6, § 1, p. 64; R.S.1913, § 6741; C.S.1922, § 6282; C.S.1929, § 79-214; R.S.

1943, § 79-213; Laws 1947, c. 272, § 1, p. 876; Laws 1949, c. 256, § 72, p. 717; Laws 1979, LB 187, § 228; Laws 1992, LB 719A, § 184; Laws 1992, LB 1001, § 14; Laws 1993, LB 348, § 15; R.S.1943, (1994), § 79-433; Laws 1996, LB 900, § 720; Laws 2006, LB 1024, § 95.

**79-1075 Joint district or learning community; joint affiliated school system; tax levy; certification.**

(1) The county board of the county in which is located the schoolhouse or the administrative office of any joint school district or learning community shall make a levy for the school district or learning community, as may be necessary, and the county clerk of that headquarters county shall certify the levy, on or before the date prescribed in section 77-1601, to the county clerk of each county in which is situated any portion of the joint school district or learning community. This section shall apply to all taxes levied on behalf of school districts, including, but not limited to, taxes authorized by sections 10-304, 10-711, 10-716.01, 77-1601, 79-747, 79-1077, 79-1084, 79-1085, 79-1086, 79-10,100, 79-10,110, 79-10,118, 79-10,120, 79-10,122, and 79-10,126.

(2) The county board of the county in which is located the schoolhouse or the administrative office of the high school district of a joint affiliated school system shall make a levy for the joint affiliated school system, as may be necessary, and the county clerk of that headquarters county shall certify the levy, on or before the date prescribed in section 77-1601, to the county clerk of each county in which is situated any portion of the joint affiliated school system. This section shall apply to all taxes levied on behalf of affiliated school systems, including, but not limited to, taxes authorized by sections 10-716.01, 79-1077, and 79-10,110.

**Source:** Laws 1907, c. 118, § 2, p. 398; Laws 1913, c. 6, § 2, p. 64; R.S.1913, § 6742; C.S.1922, § 6283; C.S.1929, § 79-215; R.S. 1943, § 79-214; Laws 1949, c. 256, § 73, p. 717; Laws 1971, LB 292, § 7; Laws 1992, LB 1001, § 15; Laws 1993, LB 348, § 16; R.S.1943, (1994), § 79-434; Laws 1996, LB 900, § 721; Laws 2001, LB 711, § 17; Laws 2006, LB 1024, § 96.

**Cross References**

For joint recreation facilities in conjunction with city of the second class, see sections 17-156 to 17-162.

**79-1076 Repealed. Laws 2001, LB 797, § 55.**

**79-1077 Affiliation; tax levy; computation.**

(1) Whenever the affiliation of a Class I district or portion thereof becomes final, the general fund property tax requirement of the high school district and each Class I district or portion thereof in an affiliated school system shall be certified to the county assessor for computation of an affiliated school system tax levy. The proceeds of such tax levy, upon collection by the county, shall be distributed to the districts in the affiliated school system in amounts which are in proportion to the amounts of the general fund property tax requirements certified by such districts to the county assessor. Such tax levy shall be computed as follows:

(a) If one or more Class I districts affiliate with only one high school district, the sum of the general fund property tax requirements of the high school

district and all such Class I districts shall be divided by the sum of the assessed valuation, in hundreds, of all such districts; or

(b) If a Class I district or portion thereof affiliates with more than one high school district, such Class I district's general fund property tax requirement shall be apportioned to respective portions of such Class I district for purposes of this computation based on each portion's assessed taxable valuation in relation to the total assessed valuation of all affiliated portions of the Class I district certified by the county clerk pursuant to section 79-1074, and the affiliated school system tax levy shall be computed as though it were a single district as prescribed in subdivision (a) of this subsection.

(2) When a Class I district or portion thereof affiliates in part with one or more districts and in part becomes a part of one or more Class VI districts, the tax levy assessed on taxable property within the Class I district to fund the portion of the budget of the Class I district which is to come from the general fund property tax requirement shall be made as follows:

(a) The proportionate share of the Class I district budget allocable to any affiliated system shall be assessed on all property within such affiliated system as described in this section; and

(b) The proportionate share of the Class I general fund property tax requirement not allocable to any affiliated system shall be assessed in accordance with section 79-1078.

**Source:** Laws 1990, LB 259, § 23; Laws 1991, LB 511, § 28; Laws 1992, LB 245, § 33; Laws 1993, LB 839, § 3; R.S.1943, (1994), § 79-438.12; Laws 1996, LB 900, § 723; Laws 1999, LB 272, § 108.

**79-1078 Class VI school system tax levy; computation; distribution of proceeds.**

The general fund property tax requirement of the Class VI school district and each Class I school district or portion thereof in a Class VI school system shall be certified to the county assessor for computation of a Class VI school system tax levy which shall not exceed the limit in section 77-3442. The proceeds of such levy, upon collection by the county, shall be distributed to the districts in the Class VI school system in amounts which are in proportion to the amounts of the general fund property tax requirement certified by such districts to the county assessor. Such levy shall be computed as follows: The sum of the property tax requirements necessary to fund the general fund property tax requirement of the Class VI school system shall be divided by the assessed valuation, in hundreds, of the system. If only a portion of a Class I district is part of the Class VI district, such Class I district's general fund property tax requirement shall be apportioned to respective portions of such Class I district for purposes of this computation based on each portion's assessed taxable valuation in relation to the total assessed valuation of the entire Class I district.

**Source:** Laws 1993, LB 839, § 2; R.S.1943, (1994), § 79-438.13; Laws 1996, LB 900, § 724; Laws 1997, LB 269, § 62; Laws 1999, LB 272, § 109.

This section (formerly section 79-438.13) violates neither the prohibition on the commutation of tax set forth in Neb. Const. Art. VIII, section 4, nor Neb. Const. Art. VIII, section 1, which

requires taxes to be levied uniformly. *Swanson v. State*, 249 Neb. 466, 544 N.W.2d 333 (1996).

**79-1079 City of the metropolitan class; school district boundaries extended; tax levy; effect.**

If the school district boundaries of a school district of a city of the metropolitan class extend outside the city, such part of the school district shall have its tax levy extended upon the county tax list, in the manner provided for in other school districts of the county, outside the school district of such city. Such taxes shall be paid to the county treasurer at the same time that other school district taxes are paid.

**Source:** Laws 1996, LB 900, § 725.

**79-1080 Class IV and V school districts; school tax; how payable.**

All taxes collected for the benefit of the public schools in Class IV and V school districts shall be paid in money and shall be subject to the order of the board of education.

**Source:** Laws 1891, c. 45, § 23, p. 325; R.S.1913, § 7029; C.S.1922, § 6660; C.S.1929, § 79-2723; R.S.1943, § 79-2726; Laws 1949, c. 256, § 225, p. 765; R.S.1943, (1994), § 79-538; Laws 1996, LB 900, § 726.

**79-1081 Class IV school district; school tax; purposes enumerated; tax levy; restriction.**

The tax for bond interest for a Class IV school district shall in no one year exceed such amount as will, with the balance on hand in such fund, be sufficient to pay the bond interest as it becomes due. The tax for the bond sinking fund shall not exceed a sum sufficient to pay the principal of such bonds as it becomes due or to pay each year such number of the bonds as will retire them all at or before their maturity. The amount of tax levied for the retirement plan fund and for general school purposes shall be without restriction, except that the aggregate school tax levy for all purposes shall not in any one year exceed such rate as shall be necessary to provide the sums reported in the estimate returned in accordance with section 79-1085. The amount of tax levied for the building and equipment fund shall not in any one year exceed fourteen cents on each one hundred dollars within the limits provided in section 77-3442.

**Source:** Laws 1917, c. 225, § 21, p. 555; Laws 1919, c. 150, § 2, p. 336; Laws 1921, c. 83, § 2, p. 298; C.S.1922, § 6630; Laws 1923, c. 65, § 1, p. 195; C.S.1929, § 79-2621; Laws 1931, c. 144, § 1, p. 393; Laws 1937, c. 176, § 8, p. 701; C.S.Supp.,1941, § 79-2621; R.S. 1943, § 79-2621; Laws 1947, c. 295, § 1, p. 909; Laws 1949, c. 270, § 1, p. 886; Laws 1949, c. 256, § 247, p. 774; Laws 1951, c. 283, § 1, p. 949; Laws 1953, c. 306, § 1, p. 1021; Laws 1953, c. 287, § 85, p. 979; Laws 1955, c. 318, § 1, p. 983; Laws 1957, c. 353, § 2, p. 1200; Laws 1959, c. 405, § 1, p. 1367; Laws 1963, c. 489, § 3, p. 1562; Laws 1967, c. 543, § 1, p. 1785; Laws 1979, LB 187, § 239; R.S.1943, (1994), § 79-904; Laws 1996, LB 900, § 727; Laws 2000, LB 968, § 82.

**79-1082 Class V school district; school tax; levy.**

The aggregate school tax for a Class V school district, including the levy for the site and building fund as authorized by section 79-10,126, shall be subject to the limits provided in section 77-3442.

**Source:** Laws 1891, c. 45, § 22, p. 325; R.S.1913, § 7028; Laws 1915, c. 126, § 1, p. 286; Laws 1917, c. 130, § 1, p. 311; Laws 1919, c. 147, § 1, p. 329; Laws 1921, c. 72, § 1, p. 271; C.S.1922, § 6659; C.S.1929, § 79-2722; Laws 1937, c. 176, § 6, p. 696; Laws 1939, c. 112, § 1, p. 485; C.S.Supp.,1941, § 79-2723; R.S.1943, § 79-2723; Laws 1945, c. 214, § 2, p. 629; Laws 1947, c. 298, § 2, p. 914; Laws 1949, c. 256, § 265, p. 780; Laws 1951, c. 285, § 1, p. 951; Laws 1953, c. 307, § 1, p. 1023; Laws 1955, c. 320, § 2, p. 989; Laws 1959, c. 407, § 1, p. 1370; R.S.1943, (1994), § 79-1007.01; Laws 1996, LB 900, § 728; Laws 2000, LB 968, § 83; Laws 2001, LB 711, § 18; Laws 2003, LB 292, § 16.

#### (d) SCHOOL BUDGETS AND ACCOUNTING

##### **79-1083 School tax; adopted budget statement; delivery; to whom.**

At the time the budget statement is certified to the levying board, each school board shall deliver to the county clerk of the headquarters county a copy of its adopted budget statement. If the school district is a member of a learning community, the school board shall also deliver to the learning community coordinating council a copy of the adopted budget statement.

**Source:** Laws 1881, c. 78, subdivision V, § 2, p. 352; Laws 1889, c. 78, § 14, p. 549; R.S.1913, § 6782; C.S.1922, § 6323; C.S.1929, § 79-502; R.S.1943, § 79-502; Laws 1949, c. 256, § 74, p. 717; Laws 1955, c. 312, § 2, p. 964; Laws 1969, c. 714, § 1, p. 2740; Laws 1969, c. 50, § 3, p. 270; Laws 1969, c. 145, § 43, p. 699; Laws 1993, LB 348, § 17; R.S.1943, (1994), § 79-435; Laws 1996, LB 900, § 729; Laws 1999, LB 272, § 110; Laws 2006, LB 1024, § 97.

Board of equalization determines amount of levy necessary to raise funds requested by school district in budget. State ex rel. School Dist. of City of Grand Island v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

Mandamus will lie to compel moderator to sign report. State ex rel. Percival v. Studheit, 11 Neb. 359, 9 N.W. 559 (1881).

Taxes should be levied upon district as it existed at time of levy, not at time of vote. School Dist. No. 9 of Hamilton County v. School Dist. No. 6 of Hamilton County, 9 Neb. 331, 2 N.W. 712 (1879).

##### **79-1083.01 Reductions in school district budget; legislative intent.**

It is the intent of the Legislature that any reductions in a school district budget, made to comply with the budget limitation in the Tax Equity and Educational Opportunities Support Act, affect classroom expenses as a last resort.

**Source:** Laws 1996, LB 299, § 6.

#### **Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

##### **79-1083.02 Class I school district; primary high school district; designation; certification.**

On or before February 5, 2003, and on or before February 1 of each year thereafter, the State Department of Education shall designate a primary high

school district for each Class I school district for the following school fiscal year. The primary high school district shall be the one Class II, III, IV, V, or VI school district or the unified system with which the greatest share of the Class I district's assessed valuation is affiliated or of which such share is a part for the school fiscal year immediately preceding the school fiscal year for which the primary high school district determination is made. The department shall certify to all school districts and all county clerks the primary high school district for each Class I district.

**Source:** Laws 1997, LB 806, § 24; Laws 1998, LB 1219, § 18; Laws 1998, Spec. Sess., LB 1, § 41; Laws 1999, LB 149, § 16; Laws 1999, LB 813, § 31; Laws 2003, LB 67, § 21; Laws 2005, LB 126, § 52; Referendum 2006, No. 422.

**79-1083.03 Repealed. Laws 2011, LB 235, § 26.**

**79-1084 Class III school district; school board; budget; tax; levy; publication of expenditures; violation; penalty; duty of county board.**

The school board of a Class III school district shall annually, on or before September 20, report in writing to the county board and the learning community coordinating council if the school district is a member of a learning community the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (1) The amount of funds required for the support of the schools during the ensuing school fiscal year; (2) the amount of funds required for the purchase of school sites; (3) the amount of funds required for the erection of school buildings; (4) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (5) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect. For Class III school districts that are not members of a learning community, the county board shall levy and collect such taxes as are necessary to provide the amount of revenue from property taxes as indicated by all the data contained in the budget and the certificate prescribed by this section, at the time and in the manner provided in section 77-1601.

**Source:** Laws 1881, c. 78, subdivision XIV, § 23, p. 385; Laws 1885, c. 80, § 1, p. 329; Laws 1893, c. 31, § 2, p. 358; R.S.1913, § 6670; C.S.1922, § 6604; C.S.1929, § 79-2522; R.S.1943, § 79-2527; Laws 1947, c. 292, § 1, p. 904; Laws 1949, c. 256, § 243, p. 771; Laws 1959, c. 404, § 1, p. 1366; Laws 1972, LB 1070, § 2; Laws 1986, LB 960, § 42; Laws 1988, LB 1193, § 1; Laws 1993, LB 734, § 51; Laws 1995, LB 452, § 32; R.S.Supp.,1995, § 79-810;

Laws 1996, LB 900, § 730; Laws 1997, LB 710, § 22; Laws 1998, Spec. Sess., LB 1, § 43; Laws 2006, LB 1024, § 98; Laws 2009, LB549, § 35.

#### Cross References

For legal rate for publications, see section 33-141.

Act creating Court of Industrial Relations is not amendatory of this section. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

Class III school district did not have authority to enter into a lease-purchase agreement of a school building. Haschke v. School Dist. of Humphrey, 184 Neb. 298, 167 N.W.2d 79 (1969).

Power of a Class III school district to raise money for general school purposes is set forth in this section. State ex rel. School Dist. of City of Grand Island v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

### **79-1085 Class IV school district; board of education; budget estimate and statement; tax levy; authorized.**

The board of education of a Class IV school district, on or before September 20 of each year, shall make or cause to be made and report to the county board an estimate of the amount of funds required for the fiscal year next ensuing: (1) For the payment of interest on bonds issued by the district; (2) to provide a sinking fund for the payment of bonds issued by the district; (3) to provide for the purchase and betterment of school sites and the remodeling, erection, and equipment, but not replacement, of buildings, new and old; (4) to provide the necessary funds, premiums, contributions, and expenses in connection with a retirement, annuity, insurance, or other benefit plan adopted by the board of education for its present and future employees after their retirement, or any reasonable classification thereof; and (5) to provide for the support of schools, being the running expenses and miscellaneous and all other expenses for such year.

The estimate shall be accompanied by a budget statement prepared in accordance with good accounting practices and showing probable revenue from all sources, expenditures, and available balances upon which such estimate was based. The estimate and the budget statement may include such items as the board of education deems necessary to maintain adequate working balances of cash at all times and to take into account the expenses and delays in the collection of taxes. The county board shall levy the rate of tax necessary to provide the amounts so reported by the board of education and collect such taxes in like manner as other taxes are levied and collected.

**Source:** Laws 1917, c. 225, § 20, p. 554; Laws 1921, c. 83, § 1, p. 297; C.S.1922, § 6629; C.S.1929, § 79-2620; R.S.1943, § 79-2620; Laws 1949, c. 256, § 246, p. 773; Laws 1957, c. 353, § 1, p. 1199; Laws 1963, c. 489, § 2, p. 1562; Laws 1972, LB 1070, § 3; Laws 1979, LB 187, § 238; Laws 1988, LB 1193, § 2; Laws 1992, LB 1063, § 197; Laws 1992, Second Spec. Sess., LB 1, § 168; Laws 1993, LB 734, § 52; Laws 1995, LB 452, § 33; R.S.Supp., 1995, § 79-903; Laws 1996, LB 900, § 731.

### **79-1086 Class V school district; board of education; budget; how prepared; certification of levy; levy of taxes.**

(1) The board of education of a Class V school district that is not a member of a learning community shall annually during the month of July estimate the amount of resources likely to be received for school purposes, including the amounts available from fines, licenses, and other sources. Before the county board of equalization makes its levy each year, the board of education shall

report to the county clerk the rate of tax deemed necessary to be levied upon the taxable value of all the taxable property of the district subject to taxation during the fiscal year next ensuing for (a) the support of the schools, (b) the purchase of school sites, (c) the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, (d) the payment of interest upon all bonds issued for school purposes, and (e) the creation of a sinking fund for the payment of such indebtedness. The county board of equalization shall levy the rate of tax so reported and demanded by the board of education and collect the tax in the same manner as other taxes are levied and collected.

(2) The school board of a Class V school district that is a member of a learning community shall annually, on or before September 20, report in writing to the county board and the learning community coordinating council the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (a) The amount of funds required for the support of the schools during the ensuing school fiscal year; (b) the amount of funds required for the purchase of school sites; (c) the amount of funds required for the erection of school buildings; (d) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (e) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect.

**Source:** Laws 1891, c. 45, § 21, p. 325; Laws 1899, c. 68, § 1, p. 299; R.S.1913, § 7027; C.S.1922, § 6658; C.S.1929, § 79-2721; Laws 1931, c. 146, § 1, p. 400; Laws 1937, c. 183, § 1, p. 722; C.S.Supp.,1941, § 79-2721; R.S.1943, § 79-2722; Laws 1945, c. 214, § 1, p. 628; Laws 1947, c. 298, § 1, p. 913; Laws 1949, c. 271, § 4, p. 889; Laws 1949, c. 256, § 264, p. 780; Laws 1955, c. 320, § 1, p. 989; Laws 1976, LB 757, § 2; Laws 1979, LB 187, § 240; Laws 1992, LB 1063, § 198; Laws 1992, Second Spec. Sess., LB 1, § 169; R.S.1943, (1994), § 79-1007; Laws 1996, LB 900, § 732; Laws 2006, LB 1024, § 99; Laws 2009, LB549, § 36.

The county board of equalization makes the levy of taxes for a school district. *C. R. T. Corp. v. Board of Equalization*, 172 Neb. 540, 110 N.W.2d 194 (1961).

**79-1087 Class V school district; board of education; bonds; interest and sinking fund; investment.**

The board of education of a Class V school district shall provide for the interest on all existing bonds issued by the district before the interest becomes due. The board shall also, immediately after the expiration of one-half of the time for which such bonds are issued, proceed to set apart each year, for a

sinking fund, a requisite amount or proportion sufficient to pay the principal of the bonds when they become due. All money set apart for the sinking fund shall be invested as follows:

(1) In the purchase of and redemption of bonds of the school district, which bonds shall be purchased in the open market in such manner as the board of education prescribes;

(2) In bonds of the city constituting the school district;

(3) In bonds of the county in which such district is situated;

(4) In bonds of the State of Nebraska; and

(5) In United States bonds.

**Source:** Laws 1891, c. 45, § 26, p. 327; R.S.1913, § 7032; C.S.1922, § 6663; C.S.1929, § 79-2726; Laws 1937, c. 183, § 3, p. 724; C.S.Supp.,1941, § 79-2726; R.S.1943, § 79-2730; Laws 1945, c. 214, § 4, p. 630; Laws 1949, c. 256, § 267, p. 781; R.S.1943, (1994), § 79-1007.03; Laws 1996, LB 900, § 733.

The county board of equalization makes the levy of taxes for a school district. C. R. T. Corp. v. Board of Equalization, 172 Neb. 540, 110 N.W.2d 194 (1961).

**79-1088 School districts; uniform system of accounting; duty of State Department of Education to prescribe.**

The State Department of Education shall prescribe a uniform system of accounting to which all public school districts in the State of Nebraska shall adhere.

**Source:** Laws 1921, c. 59, § 1, p. 242; C.S.1922, § 6546; C.S.1929, § 79-2122; R.S.1943, § 79-2131; Laws 1949, c. 256, § 179, p. 750; R.S.1943, (1994), § 79-4,141; Laws 1996, LB 900, § 734.

**79-1089 Audit by public accountant or certified public accountant; report; failure to comply; effect.**

In each school district the school board shall cause to be examined annually by a public accountant or by a certified public accountant all financial records which are maintained directly or indirectly in the administration and management of public school funds. Rules and regulations governing the scope, extent, pattern, and report of the examination shall be adopted and promulgated by the State Board of Education with the advice and counsel of the Auditor of Public Accounts. A copy of the report shall be filed with the Commissioner of Education and the Auditor of Public Accounts on or before November 5. A copy of the report regarding the examination of a Class I school district shall be filed with the Commissioner of Education on or before November 5. When any school district fails to comply with this section, the commissioner shall, after notice to the district and an opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the district has complied with this section. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of compliance by the district with this section. The county treasurer shall withhold such money. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the fiscal year for which state aid was

calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031.

**Source:** Laws 1963, c. 464, § 1, p. 1492; Laws 1979, LB 414, § 3; R.S.1943, (1987), § 79-546; Laws 1988, LB 970, § 2; Laws 1989, LB 487, § 6; Laws 1992, LB 119, § 1; Laws 1992, LB 1001, § 18; R.S.1943, (1994), § 79-4,141.01; Laws 1996, LB 900, § 735; Laws 1997, LB 710, § 23; Laws 1999, LB 149, § 18; Laws 1999, LB 272, § 111; Laws 2001, LB 797, § 40.

**Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-1090 Failure to approve budget; superintendent of primary high school district; duties.**

When a school board of any class of school district fails to approve a school district budget on or before the date required by subsection (1) of section 13-508, the superintendent of the primary high school district shall prepare and file a budget document in accordance with the Nebraska Budget Act for the school district's general fund and for each other fund for which the district budgeted in the immediately preceding fiscal year. The document shall use the total budget of expenditures and cash reserves from the immediately preceding school fiscal year, except that in no case shall the budget of expenditures or cash reserves exceed any limits prescribed in the Tax Equity and Educational Opportunities Support Act or other state laws. The superintendent shall also estimate the revenue from sources other than property tax for each fund in accordance with subdivision (1)(c) of section 13-504 and section 79-1022.

**Source:** Laws 1989, LB 487, § 7; Laws 1991, LB 511, § 45; Laws 1992, LB 245, § 50; Laws 1994, LB 1310, § 5; R.S.1943, (1994), § 79-4,159; Laws 1996, LB 900, § 736; Laws 1998, Spec. Sess., LB 1, § 44; Laws 1999, LB 272, § 112; Laws 1999, LB 813, § 33.

**Cross References**

Nebraska Budget Act, see section 13-501.

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-1091 School district; fiscal year.**

The fiscal year of each school district shall commence on September 1 in each year and end on August 31 of each year.

**Source:** Laws 1969, c. 706, § 1, p. 2708; R.S.1943, (1994), § 79-810.01; Laws 1996, LB 900, § 737.

**Cross References**

Fiscal year for purposes of the Special Education Act, see section 79-1143.

**79-1092 Cities changing classification; school funds; to whom payable; how used.**

All money arising from any source whatever which is payable to the school fund of any city of the primary class or city of the first class which may become a city of the metropolitan class, or any money which is required to be set apart by the treasurer of any such city for the support and maintenance of any school in such city, shall be payable to the treasurer of the school district and shall be

used only for the purposes specified in sections 79-409, 79-476, 79-522, 79-535 to 79-537, 79-552, 79-561, 79-562, 79-567, 79-573, 79-574, 79-583, 79-584, 79-592, 79-593, 79-1086, 79-1087, 79-1092, and 79-10,126.

**Source:** Laws 1891, c. 45, § 28, p. 328; R.S.1913, § 7034; C.S.1922, § 6665; C.S.1929, § 79-2728; R.S.1943, § 79-2732; Laws 1949, c. 256, § 268, p. 781; R.S.1943, (1994), § 79-1007.04; Laws 1996, LB 900, § 738; Laws 2001, LB 797, § 41.

**79-1093 Class III, IV, or V school district; machine accounting and payroll processing; disbursing of funds; board of education; contract.**

(1) The board of education of a Class III, IV, or V school district may contract for (a) machine accounting and payroll processing services, (b) disbursing school funds as ordered by the board of education, (c) paying net salaries or wages earned by professional and other personnel employed by the board of education, (d) remitting to appropriate collection agencies sums withheld from salaries and wages, and (e) any other computerized service which the board of education deems necessary or desirable. Payment of salaries and wages as provided in this section shall be made to the employee in bank credit or cash, as the employee may specify.

(2) The bank or fiscal agent under contract as provided in this section shall furnish to the board of education a report at the end of each month detailing (a) the sums received for deposit in the school district account, (b) the amount disbursed to payees as designated by the secretary or authorized clerk of the board of education, and (c) the unexpended balance in the school district account. This section does not modify, limit, waive, or abrogate the responsibility and the liability of the contracting board of education for the security and safe custody of school funds as required by law or for their proper use and application to school district indebtedness as provided by law.

**Source:** Laws 1967, c. 510, § 1, p. 1712; R.S.1943, (1994), § 79-543.01; Laws 1996, LB 900, § 739.

(e) **SITE AND FACILITIES ACQUISITION,  
MAINTENANCE, AND DISPOSITION**

**79-1094 District maintaining more than one school; closing, when authorized.**

The school board of any district maintaining more than one school may close any school or schools within such district and may make provision for the education of children either in another school of the district, in the school of any other district, or by correspondence instruction for such children as may be physically incapacitated for traveling to or attending other schools, with the permission of the parent.

**Source:** Laws 1939, c. 113, § 1, p. 488; C.S.Supp.,1941, § 79-218; R.S. 1943, § 79-223; Laws 1949, c. 256, § 108, p. 727; R.S.1943, (1994), § 79-469; Laws 1996, LB 900, § 740; Laws 1999, LB 272, § 113.

This section does not apply to school district having first class city within its boundaries. State ex rel. Strange v. School District of Nebraska City, 150 Neb. 109, 33 N.W.2d 358 (1948).

The school board of any district maintaining more than one school may close any school or schools within the district.

Haskell v. Madison Cty. Sch. Dist. No. 0001, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

**79-1095 Eminent domain; power of district to exercise.**

Every school district shall have power to exercise the right of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1921, c. 51, § 1, p. 222; C.S.1922, § 6486; C.S.1929, § 79-1701; R.S.1943, § 79-1701; Laws 1949, c. 256, § 145, p. 742; Laws 1951, c. 101, § 119, p. 503; R.S.1943, (1994), § 79-4,107; Laws 1996, LB 900, § 741.

A school district has the power of eminent domain, and the only legislative restrictions limit the school site to fifty acres, and public parks and fairgrounds may not be condemned. *Father Flanagan's Boys' Home v. Millard School Dist.*, 196 Neb. 299, 242 N.W.2d 637 (1976).

**79-1096 Eminent domain; amount and character of land authorized to be taken; public hearing; notice.**

Not more than fifty acres for a school site may be taken under the provisions of section 79-1095. Public parks and county or district fairgrounds shall not be subject to be so taken. A public hearing shall be held on the question of such taking. Notice of such public hearing shall be given once each week for three successive weeks prior to the hearing in a legal newspaper published in or of general circulation in the county. Such notice shall include the purpose and location of the hearing.

**Source:** Laws 1921, c. 51, § 8, p. 224; C.S.1922, § 6493; C.S.1929, § 79-1708; R.S.1943, § 79-1708; Laws 1949, c. 256, § 152, p. 744; Laws 1951, c. 101, § 120, p. 503; Laws 1951, c. 295, § 1, p. 975; Laws 1953, c. 318, § 1, p. 1051; Laws 1959, c. 382, § 3, p. 1325; Laws 1973, LB 252, § 1; R.S.1943, (1994), § 79-4,114; Laws 1996, LB 900, § 742.

Where publication and notice requirements of the public hearing required were not strictly complied with, plaintiffs are nevertheless precluded from bringing an action to contest the validity of the proceedings where plaintiffs have received and accepted their eminent domain award. *Duffey v. School Dist. No. One of Washington County*, 200 Neb. 702, 265 N.W.2d 212 (1978).

A school district has the power of eminent domain, and the only legislative restrictions limit the school site to fifty acres, and public parks and fairgrounds may not be condemned. *Father Flanagan's Boys' Home v. Millard School Dist.*, 196 Neb. 299, 242 N.W.2d 637 (1976).

**79-1097 Eminent domain; location upon state school land; authority of district to purchase.**

When a school district desires to locate a schoolhouse on school lands belonging to the state, it may purchase not less than one acre and not more than ten acres per school site and shall receive a deed for such land from the state.

**Source:** Laws 1921, c. 51, § 11, p. 225; C.S.1922, § 6496; C.S.1929, § 79-1711; R.S.1943, § 79-1711; Laws 1949, c. 256, § 155, p. 745; R.S.1943, (1994), § 79-4,117; Laws 1996, LB 900, § 743.

**79-1098 Schoolhouse; erection or improvement; equipment; special tax.**

Whenever it is deemed necessary (1) to erect a schoolhouse or school building or an addition or additions and improvements to any existing schoolhouse or (2) to purchase equipment for such schoolhouse or school buildings, in any school district in this state except a Class I district the school board may and, upon petition of not less than one-fourth of the legal voters of the school district, shall submit to the people of the school district at the next general

election or special election a proposition to vote a special annual tax for that purpose of not to exceed seventeen and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district for a term of not to exceed ten years. Such special tax may be voted at any annual or special meeting of the district by fifty-five percent of the legal voters attending such meeting.

**Source:** Laws 1935, c. 170, § 1, p. 624; C.S.Supp.,1941, § 79-133; R.S. 1943, § 79-144; Laws 1947, c. 270, § 1, p. 872; Laws 1949, c. 256, § 61, p. 713; Laws 1953, c. 287, § 79, p. 975; Laws 1979, LB 187, § 226; Laws 1992, LB 719A, § 183; R.S.1943, (1994), § 79-422; Laws 1996, LB 900, § 744; Laws 1998, LB 1219, § 19.

Raising of money by taxation for construction of school building is authorized. State ex rel. School Dist. of City of Grand

Island v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

**79-1099 Schoolhouse; erection or improvement; equipment; submission to voters.**

In all Class I school districts, the proposition described in section 79-1098 shall be submitted at any annual or special meeting of the legal voters of the school district. In all other districts the manner of submission shall be governed in substance by section 23-126.

**Source:** Laws 1935, c. 170, § 2, p. 624; C.S.Supp.,1941, § 79-134; R.S. 1943, § 79-145; Laws 1949, c. 256, § 62, p. 713; R.S.1943, (1994), § 79-423; Laws 1996, LB 900, § 745; Laws 1997, LB 345, § 34.

This section (formerly section 79-423) mandates that in Class I school districts, propositions to raise money through a special annual tax for the purpose of making additions and improvements to an existing schoolhouse must be voted on and ap-

proved by the electors of the school district at the district's annual or special meeting. Rauter v. School Dist. 1-R of Hall Cty., 251 Neb. 135, 555 N.W.2d 763 (1996).

**79-10,100 Schoolhouse; erection or improvement; equipment; vote required to approve.**

The school board or board of education, upon being satisfied that all the requirements of sections 79-1098 and 79-1099 have been substantially complied with and that fifty-five percent of all votes cast at the election under such sections are in favor of such tax, shall enter such proposition and all the proceedings had thereon upon the records of the school district and shall certify the special tax levy to the county clerk as other tax levies.

**Source:** Laws 1935, c. 170, § 3, p. 624; C.S.Supp.,1941, § 79-135; R.S. 1943, § 79-146; Laws 1949, c. 256, § 63, p. 713; R.S.1943, (1994), § 79-424; Laws 1996, LB 900, § 746.

**79-10,101 Schoolhouse; erection or improvement; equipment; tax fund; transfer; limitation upon use; investment.**

The sum levied and collected under section 79-10,100 shall (1) constitute a special fund for the purposes for which it was voted, (2) not be used for any other purpose unless otherwise authorized by a fifty-five percent majority vote of the legal voters of the school district cast at the election under sections 79-1098 and 79-1099, (3) be paid over to the county treasurer of the county in which the administrative office of such school district is located, (4) be kept by the county treasurer and treasurer of the school district separate and apart from other district funds, and (5) be subject to withdrawal as provided in

section 79-587. Any portion of such sum so levied and collected, the expenditure of which is not required to effectuate the purposes for which such sum was voted, may be transferred by the school board, at any regular or special meeting by the vote of a majority of the members attending, to the general fund of the district. All funds received by the district treasurer for such purpose shall be immediately invested by such treasurer in United States Government bonds or in such securities in which the state investment officer may invest the permanent school funds during the accumulation of such sinking fund.

**Source:** Laws 1935, c. 170, § 4, p. 625; C.S.Supp.,1941, § 79-136; R.S. 1943, § 79-147; Laws 1949, c. 256, § 64, p. 713; Laws 1969, c. 50, § 2, p. 270; R.S.1943, (1994), § 79-425; Laws 1996, LB 900, § 747; Laws 1997, LB 345, § 35.

Pursuant to subsection (2) of this section (formerly section 79-425), special funds must be used for the purpose designated when the fund was established. *Rauert v. School Dist. 1-R of Hall Cty.*, 251 Neb. 135, 555 N.W.2d 763 (1996).

### **79-10,102 Schoolhouse; where built.**

No school district shall build a schoolhouse outside its district except as provided in section 79-10,119 or when built on land owned by the federal government when such land is controlled under a freeholders lease agreement.

**Source:** Laws 1951, c. 277, § 3, p. 937; Laws 1955, c. 309, § 1, p. 953; R.S.1943, (1994), § 79-425.01; Laws 1996, LB 900, § 748.

### **79-10,103 Real property; lease or acquisition; located outside of district; purpose; election; when.**

(1) The school board of any school district may lease, purchase, acquire, own, manage, and hold title to real property which is located outside of its school district for laboratory, recreation, camping, or educational facilities, except that any purchase costing (a) more than one thousand dollars by any Class I or II school district or (b) more than five thousand dollars by any Class III, IV, V, or VI school district shall be submitted to a vote of the legal voters in that school district seeking to acquire the property.

(2) The election provisions of this section do not apply when a school district which currently owns real property outside the school district desires to lease, purchase, acquire, own, manage, and hold title to additional real property located contiguous to such property for laboratory, recreation, camping, or educational facilities.

**Source:** Laws 1965, c. 511, § 1, p. 1632; Laws 1975, LB 303, § 1; R.S.1943, (1994), § 79-4,153; Laws 1996, LB 900, § 749; Laws 1997, LB 345, § 36.

### **79-10,104 Real property; acquisition; instructional purposes; construction of buildings; limitation.**

(1) A school district may acquire, except by eminent domain, real property for use in instructing students in the practical application of skills taught in classes offered by such school district. A school district may construct or improve buildings upon such property, including, but not limited to, buildings constructed or improved as a part of a buildings trade program offered by such district.

(2) Any construction on or improvement or use of property acquired pursuant to subsection (1) of this section shall be in compliance with applicable building codes and zoning requirements.

(3) A school district may sell or lease property acquired pursuant to subsection (1) of this section directly or through an agent.

**Source:** Laws 1981, LB 218, § 4; R.S.1943, (1994), § 79-4,153.01; Laws 1996, LB 900, § 750.

**Cross References**

Bids, when required, see section 73-106.

**79-10,105 Lease or lease-purchase agreements; public school district; authorization; restrictions.**

The school board or board of education of any public school district may enter into a lease or lease-purchase agreement for the exclusive use of its individual jurisdiction for such buildings or equipment as the board determines necessary. Such lease or lease-purchase agreements may not exceed a period of seven years, except that lease-purchase agreements entered into as part of an energy financing contract pursuant to section 66-1065 may not exceed a period of thirty years. All payments pursuant to such leases shall be made from current building funds or general funds. No school district shall directly or indirectly issue bonds to fund any such lease-purchase plan for a capital construction project exceeding twenty-five thousand dollars in costs unless it first obtains a favorable vote of the legal voters pursuant to Chapter 10, article 7. This section does not prevent the school board or board of education of any public school district from refinancing a lease or lease-purchase agreement without a vote of the legal voters for the purpose of lowering finance costs regardless of whether such agreement was entered into prior to July 9, 1988.

**Source:** Laws 1971, LB 732, § 1; Laws 1981, LB 371, § 1; Laws 1985, LB 633, § 3; Laws 1988, LB 435, § 1; R.S.1943, (1994), § 79-4,154; Laws 1996, LB 900, § 751; Laws 1997, LB 345, § 37; Laws 1998, LB 1129, § 14; Laws 2008, LB747, § 2.

School district's lease/purchase of modular buildings was authorized under this section. *Foree v. School Dist. No. 7 of Holt County*, 242 Neb. 166, 493 N.W.2d 625 (1993).

This section empowered the school district to enter into a contract with the Ord School District Building Corporation by

which the district leases an addition to its school building, to be built by the corporation, for a five-year term, and thereafter the building is to be donated to the district. This section does not restrict who the lessor may be under such a contract. *George v. Board of Education*, 210 Neb. 127, 313 N.W.2d 259 (1981).

**79-10,106 Schoolhouse; use for public assemblies; rental.**

The school board or board of education of any school district may in its discretion permit the use of public school buildings for public assemblages under such rules and regulations as it may adopt. The board may exact such rental as may be necessary to meet the expense of such meeting, restore the property, and pay for extra help required.

**Source:** Laws 1915, c. 236, § 1, p. 553; C.S.1922, § 6554; C.S.1929, § 79-2130; R.S.1943, § 79-2138; Laws 1949, c. 256, § 180, p. 751; R.S.1943, (1994), § 79-4,142; Laws 1996, LB 900, § 752.

**79-10,107 School district property; lease authorized.**

The school board or board of education of any school district may lease, upon such terms and conditions as it determines, any school district property or

portion thereof which it determines is not needed for the immediate use of the school district.

**Source:** Laws 1988, LB 1077, § 1; R.S.1943, (1994), § 79-4,142.01; Laws 1996, LB 900, § 753.

**79-10,108 Public parks; conveyance to school districts; when authorized; resolution.**

Any city or village in this state may convey title to any real estate owned by any such city or village dedicated or used as a public park to the school district in any such city or village within the boundaries of which such real estate lies, whenever in the judgment of the governing body of any such city or village such real estate is no longer necessary or desirable for use as a public park. The judgment of such governing body shall be evidenced by a resolution, which resolution shall not be finally passed earlier than the next succeeding regular meeting of such governing body after the regular meeting at which it was introduced.

**Source:** Laws 1937, c. 36, § 1, p. 165; C.S.Supp.,1941, § 79-2901; R.S. 1943, § 79-2144; Laws 1949, c. 256, § 183, p. 751; R.S.1943, (1994), § 79-4,145; Laws 1996, LB 900, § 754.

**79-10,109 Public parks; conveyance to school districts; use.**

Any such real estate conveyed under the provisions of section 79-10,108 may be used by such school district only in the manner and to the extent that other real estate owned by such school district may be used.

**Source:** Laws 1937, c. 36, § 2, p. 165; C.S.Supp.,1941, § 79-2902; R.S. 1943, § 79-2145; Laws 1949, c. 256, § 184, p. 752; R.S.1943, (1994), § 79-4,146; Laws 1996, LB 900, § 755.

**79-10,110 Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose; school board; powers and duties; hearing; tax levy authorized; issuance of bonds authorized.**

(1) After making a determination that an actual or potential environmental hazard or accessibility barrier exists, that a life safety code violation exists, or that expenditures are needed for indoor air quality or mold abatement and prevention within the school buildings or grounds under its control, a school board may make and deliver to the county clerk of such county in which any part of the school district is situated, not later than the date provided in section 13-508, an itemized estimate of the amounts necessary to be expended for the abatement of such environmental hazard, for accessibility barrier elimination, or for modifications for life safety code violations, indoor air quality, or mold abatement and prevention in such school buildings or grounds. The board shall designate the particular environmental hazard abatement project, accessibility barrier elimination project, or modification for life safety code violations, indoor air quality, or mold abatement and prevention for which the tax levy provided for by this section will be expended, the period of years, which shall not exceed ten years, for which the tax will be levied for such project, and the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance.

(2) After a public hearing, a school board may undertake any qualified capital purpose in any qualified zone academy under its control and may levy a tax as

provided in this section to repay a qualified zone academy bond issued for such undertaking. The board shall designate: (a) The particular qualified capital purpose for which the qualified zone academy bond was issued and for which the tax levy provided for by this section will be expended; (b) the period of years for which the tax will be levied to repay such qualified zone academy bond, not exceeding the maturity term for such qualified zone academy bond established pursuant to federal law or, for any such bond issued prior to May 20, 2009, fifteen years; and (c) the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(3) After a public hearing, a school board may undertake any American Recovery and Reinvestment Act of 2009 purpose and may levy a tax to repay any American Recovery and Reinvestment Act of 2009 bond issued for such undertaking. The board shall designate: (a) The American Recovery and Reinvestment Act of 2009 purpose for which the American Recovery and Reinvestment Act of 2009 bond will be issued and for which the tax levy provided by this section will be expended; (b) the period of years for which the tax will be levied to repay such American Recovery and Reinvestment Act of 2009 bond, not exceeding the maturity term for the type of American Recovery and Reinvestment Act of 2009 bond established pursuant to federal law or, if no such term is established, thirty years; and (c) the estimated amount of the levy for each year of such period based on the taxable valuation of the district at the time of issuance. Prior to the public hearing, the school board shall prepare an itemized estimate of the amounts necessary to be expended for the American Recovery and Reinvestment Act of 2009 purpose. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(4) The board may designate more than one project under subsection (1) of this section, more than one qualified capital purpose under subsection (2) of this section, or more than one American Recovery and Reinvestment Act of 2009 purpose under subsection (3) of this section and levy a tax pursuant to this section for each such project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each such levy will not exceed the limitations specified in this section. Each levy for a project, a qualified capital purpose, or an American Recovery and Reinvestment Act of 2009 purpose which is authorized by this section may be imposed for such duration as the board specifies, notwithstanding the contemporaneous existence or subsequent imposition of any other levy for another project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose imposed pursuant to this section and notwithstanding the subsequent issuance by the district of bonded indebtedness payable from its general fund levy.

(5) The county clerk shall levy such taxes, not to exceed five and one-fifth cents per one hundred dollars of taxable valuation for Class II, III, IV, V, and VI districts, and not to exceed the limits set for Class I districts in section 79-10,124, on the taxable property of the district necessary to (a) cover the environmental hazard abatement or accessibility barrier elimination project

costs or costs for modification for life safety code violations, indoor air quality, or mold abatement and prevention itemized by the board pursuant to subsection (1) of this section and (b) repay any qualified zone academy bonds or American Recovery and Reinvestment Act of 2009 bonds pursuant to subsection (2) or (3) of this section. Such taxes shall be collected by the county treasurer at the same time and in the same manner as county taxes are collected and when collected shall be paid to the treasurer of the district and used to cover the project costs.

(6) If such board operates grades nine through twelve as part of an affiliated school system, it shall designate the fraction of the project or undertaking to be conducted for the benefit of grades nine through twelve. Such fraction shall be raised by a levy placed upon all of the taxable value of all taxable property in the affiliated school system pursuant to subsection (2) of section 79-1075. The balance of the project or undertaking to be conducted for the benefit of grades kindergarten through eight shall be raised by a levy placed upon all of the taxable value of all taxable property in the district which is governed by such board. The combined rate for both levies in the high school district, to be determined by such board, shall not exceed five and one-fifth cents on each one hundred dollars of taxable value.

(7) Each board which submits an itemized estimate shall establish an environmental hazard abatement and accessibility barrier elimination project account, a life safety code modification project account, an indoor air quality project account, or a mold abatement and prevention project account, each board which undertakes a qualified capital purpose shall establish a qualified capital purpose undertaking account, within the qualified capital purpose undertaking fund, and each board which undertakes an American Recovery and Reinvestment Act of 2009 purpose shall establish an American Recovery and Reinvestment Act of 2009 purpose undertaking account. Taxes collected pursuant to this section shall be credited to the appropriate account to cover the project or undertaking costs. Such estimates may be presented to the county clerk and taxes levied accordingly.

(8) For purposes of this section:

(a) Abatement includes, but is not limited to, any inspection and testing regarding environmental hazards, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate environmental hazards, any removal or encapsulation of environmentally hazardous material or property, any related restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate environmental hazards in the school buildings or on the school grounds under the board's control, except that abatement does not include the encapsulation of any material containing more than one percent friable asbestos;

(b) Accessibility barrier means anything which impedes entry into, exit from, or use of any building or facility by all people;

(c) Accessibility barrier elimination includes, but is not limited to, inspection for and removal of accessibility barriers, maintenance to reduce, lessen, put an end to, diminish, control, dispose of, or eliminate accessibility barriers, related restoration or replacement of facilities or property, any related architectural and engineering services, and any other action to eliminate accessibility barriers in the school buildings or grounds under the board's control;

(d) American Recovery and Reinvestment Act of 2009 bond means any type or form of bond permitted by the federal American Recovery and Reinvestment Act of 2009, as such act or bond may be amended and supplemented, including the federal Hiring Incentives to Restore Employment Act, as amended and supplemented, for use by schools, except qualified zone academy bonds;

(e) American Recovery and Reinvestment Act of 2009 purpose means any construction of a new public school facility or the acquisition of land on which such a facility is to be constructed or any expansion, rehabilitation, modernization, renovation, or repair of any existing school facilities financed in whole or in part with an American Recovery and Reinvestment Act of 2009 bond;

(f) Environmental hazard means any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety if such substance has been declared hazardous by a federal or state statute, rule, or regulation;

(g) Modification for indoor air quality includes, but is not limited to, any inspection and testing regarding indoor air quality, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate indoor air quality problems, any related restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate indoor air quality problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(h) Modification for life safety code violation includes, but is not limited to, any inspection and testing regarding life safety codes, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate life safety hazards, any related restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate life safety hazards in new or existing school buildings or on school grounds under the control of a school board;

(i) Modification for mold abatement and prevention includes, but is not limited to, any inspection and testing regarding mold abatement and prevention, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate mold problems, any related restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate mold problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(j) Qualified capital purpose means (i) rehabilitating or repairing the public school facility in which the qualified zone academy is established or (ii) providing equipment for use at such qualified zone academy;

(k) Qualified zone academy has the meaning found in (i) 26 U.S.C. 1397E(d)(4), as such section existed on October 3, 2008, for qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(d)(1), as such section existed on October 4, 2008, for qualified zone academy bonds issued on or after such date;

(l) Qualified zone academy allocation means the allocation of the qualified zone academy bond limitation by the State Department of Education to the qualified zone academies pursuant to (i) 26 U.S.C. 1397E(e)(2), as such section existed on October 3, 2008, for allocations relating to qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(c)(2), as such

section existed on October 4, 2008, for allocations relating to qualified zone academy bonds issued on or after such date; and

(m) Qualified zone academy bond has the meaning found in (i) 26 U.S.C. 1397E(d)(1), as such section existed on October 3, 2008, for such bonds issued on or before such date, and (ii) 26 U.S.C. 54E(a), as such section existed on and after October 4, 2008, for such bonds issued on or after such date, as such section or bonds may be amended or supplemented.

(9) Accessibility barrier elimination project costs includes, but is not limited to, inspection, maintenance, accounting, emergency services, consultation, or any other action to reduce or eliminate accessibility barriers.

(10)(a) For the purpose of paying amounts necessary for the abatement of environmental hazards, for accessibility barrier elimination, for modifications for life safety code violations, indoor air quality, or mold abatement and prevention, for a qualified capital purpose, or for an American Recovery and Reinvestment Act of 2009 purpose, the board may borrow money, establish a sinking fund, and issue bonds and other evidences of indebtedness of the district, which bonds and other evidences of indebtedness shall be secured by and payable from an irrevocable pledge by the district of amounts received in respect of the tax levy provided for by this section and any other funds of the district available therefor. Bonds issued for a qualified capital purpose or an American Recovery and Reinvestment Act of 2009 purpose shall be limited to the type or types of bonds authorized for each purpose in subsections (2) and (3) of this section, respectively. Bonds and other evidences of indebtedness issued by a district pursuant to this subsection shall not constitute a general obligation of the district or be payable from any portion of its general fund levy.

(b) A district may exceed the maximum levy of five and one-fifth cents per one hundred dollars of taxable valuation authorized by subsections (5) and (6) of this section in any year in which (i) the taxable valuation of the district is lower than the taxable valuation in the year in which the district last issued bonds pursuant to this section and (ii) such maximum levy is insufficient to meet the combined annual principal and interest obligations for all bonds issued pursuant to this section. The amount generated from a district's levy in excess of the maximum levy upon the taxable valuation of the district shall not exceed the combined annual principal and interest obligations for such bonds minus the amount generated by levying the maximum levy upon the taxable valuation of the district and minus any federal payments or subsidies associated with such bonds.

(11) The total principal amount of bonds for modifications to correct life safety code violations, for indoor air quality problems, for mold abatement and prevention, or for an American Recovery and Reinvestment Act of 2009 purpose which may be issued pursuant to this section shall not exceed the total amount specified in the itemized estimate described in subsections (1) and (3) of this section.

(12) The total principal amount of qualified zone academy bonds which may be issued pursuant to this section for qualified capital purposes with respect to a qualified zone academy shall not exceed the qualified zone academy allocation granted to the board by the department. The total amount that may be financed by qualified zone academy bonds pursuant to this section for qualified purposes with respect to a qualified zone academy shall not exceed seven and one-half million dollars statewide in a single year. In any year that the

Nebraska qualified zone academy allocations exceed seven and one-half million dollars for qualified capital purposes to be financed with qualified zone academy bonds issued pursuant to this section, (a) the department shall reduce such allocations proportionally such that the statewide total for such allocations equals seven and one-half million dollars and (b) the difference between the Nebraska allocation and seven and one-half million dollars shall be available to qualified zone academies for requests that will be financed with qualified zone academy bonds issued without the benefit of this section.

Nothing in this section directs the State Department of Education to give any preference to allocation requests that will be financed with qualified zone academy bonds issued pursuant to this section.

(13) The State Department of Education shall establish procedures for allocating bond authority to school boards as may be necessary pursuant to an American Recovery and Reinvestment Act of 2009 bond.

**Source:** Laws 1983, LB 624, § 2; Laws 1985, LB 405, § 1; Laws 1987, LB 212, § 1; Laws 1988, LB 1073, § 19; Laws 1989, LB 487, § 8; Laws 1989, LB 706, § 9; Laws 1992, LB 1001, § 19; Laws 1993, LB 348, § 22; Laws 1994, LB 1310, § 6; R.S.1943, (1994), § 79-4,207; Laws 1996, LB 900, § 756; Laws 1996, LB 1044, § 817; Laws 1997, LB 710, § 24; Laws 1999, LB 813, § 34; Laws 2001, LB 240, § 1; Laws 2001, LB 797, § 42; Laws 2002, LB 568, § 10; Laws 2003, LB 67, § 23; Laws 2003, LB 540, § 10; Laws 2009, LB545, § 24; Laws 2009, LB549, § 37; Laws 2010, LB1071, § 25; Laws 2012, LB633, § 6.

**79-10,110.01 Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose bonds; refunding bonds; authorized; conditions.**

(1) If a school board has issued or shall issue bonds pursuant to section 79-10,110 and such bonds or any part of such bonds are unpaid, are a legal liability against the school district governed by such school board, and are bearing interest, the school board may issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the date of maturity or the redemption date of such bonds. Such school board may include various series and issues of the outstanding bonds in a single issue of refunding bonds and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the school board determines to be in the best interests of the school district. The proceeds derived from the sale of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, the school board may enter into a contract with any bank or trust company within or without the state with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. All bonds issued under this section shall be redeemable at such times and under such conditions as the school board shall determine at the time of issuance.

(2) Any outstanding bonds or other evidences of indebtedness issued by a school board for which sufficient funds or obligations of or guaranteed by the United States Government have been pledged and set aside in safekeeping to be applied for the complete payment of such bonds or other evidences of indebtedness at maturity or upon redemption prior to maturity, interest thereon, and redemption premium, if any, shall not be considered as outstanding and unpaid.

(3) Each refunding bond issued under this section shall state on the bond (a) the object of its issue, (b) this section or the sections of the law under which such issue was made, including a statement that the issue is made in pursuance of such section or sections, and (c) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

(4) The refunding bonds shall be paid, and the levy made and the tax collected for their payment in the same manner and under the same authorization for levy of taxes as applied for the bonds being refunded, in accordance with section 79-10,110.

**Source:** Laws 2012, LB633, § 7.

**79-10,111 Class I or II school district; schoolhouse; selection or change of site; vote required.**

The legal voters in a Class I or II school district, when lawfully assembled, may adjourn from time to time, as may be necessary, to designate a site for a schoolhouse by a vote of fifty-five percent of those present and to change the designation of a site for a schoolhouse by a similar vote at any annual or special meeting. In any school district in which the schoolhouse is located three-fourths of one mile or more from the center of such district, such schoolhouse site may be changed to a point nearer the center of the district by a majority vote of those present at any such school meeting. In any school district containing more than one hundred fifty children five through twenty years of age and having a school board of five or more members, the schoolhouse site in the district may be changed or the purchasing of a new site may be directed, or both, at any annual or special meeting, by a fifty-five percent vote of those present at any such meeting. A schoolhouse site shall not be changed more than once in any one school year.

**Source:** Laws 1881, c. 78, subdivision II, § 8, p. 340; Laws 1889, c. 78, § 4, p. 543; Laws 1911, c. 117, § 1, p. 412; R.S.1913, § 6737; C.S.1922, § 6275; C.S.1929, § 79-208; R.S.1943, § 79-208; Laws 1949, c. 256, § 188, p. 753; Laws 1990, LB 1090, § 13; R.S.1943, (1994), § 79-504; Laws 1996, LB 900, § 757; Laws 1997, LB 345, § 38; Laws 2014, LB946, § 43.

Operative date January 1, 2015.

1. Vote required
2. Miscellaneous

**1. Vote required**

The authority to direct the purchase of a site for a schoolhouse or other school buildings in a class six district is reserved to the voters of the district. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

Under former law even though schoolhouse was changed without requisite two-thirds vote, recovery could be had for materials furnished in constructing schoolhouse at new site.

*Harms v. School District No. 2 of Gage County*, 139 Neb. 714, 298 N.W. 549 (1941).

Under former law, change of schoolhouse site of rural school district could not be made without requisite two-thirds vote. *Cunningham v. Ilg*, 118 Neb. 682, 226 N.W. 333 (1929).

Under former law, selection of building site could be made only by electors at district meeting, by vote of two-thirds of

qualified electors present. *State ex rel. Britt v. Matson*, 97 Neb. 746, 151 N.W. 304 (1915).

Under former law, majority vote of those present was required to move site nearer center. *McLain v. Maricle*, 60 Neb. 359, 83 N.W. 829 (1900).

## 2. Miscellaneous

Those present and not voting are counted in determining required percentage. *Richards v. McBride*, 160 Neb. 57, 68 N.W.2d 692 (1955).

Legal voter may enjoin removal to test validity of proceedings. *Lindeman v. Corson*, 93 Neb. 548, 141 N.W. 153 (1913); *McLain v. Maricle*, 60 Neb. 353, 83 N.W. 85 (1900).

Description of new site by section only is sufficient. *McMahon v. School Dist. No. 66 of Antelope County*, 80 Neb. 156, 113 N.W. 1046 (1907).

Record of proceedings should be liberally construed. *Quisenberry v. School Dist. No. 6 of Hall County*, 75 Neb. 47, 105 N.W. 982 (1905).

Designation of new site does not impliedly authorize its purchase. *Ladd v. School Dist. No. 6 of Hall County*, 70 Neb. 438, 97 N.W. 594 (1903).

District with no schoolhouse may select building at special meeting and direct board to lease same, and mandamus will lie to execute command. *Krull v. State ex rel. Furgason*, 59 Neb. 97, 80 N.W. 272 (1899).

Authority to change site cannot be delegated to committee, but must be done at annual meeting. *School Dist. No. 34 of Custer County v. Stairs*, 1 Neb. Unof. 85, 95 N.W. 492 (1901).

## 79-10,112 Repealed. Laws 1999, LB 272, § 118.

## 79-10,113 Class I school district; property; sale; how conveyed.

The legal voters of a Class I school district shall also, at any annual or special meeting, authorize and direct, by a fifty-five percent vote, the sale of any schoolhouse, site, building, or other property belonging to the district when it is no longer needed for the use of the district. When real estate is sold, the district may convey it by deed signed by the president of the district, and such deed, when acknowledged by such officer to be the act of the district, may be recorded in the office of the register of deeds of the county in which the real estate is situated in like manner as other deeds.

**Source:** Laws 1881, c. 78, subdivision II, § 15, p. 342; Laws 1889, c. 78, § 8, p. 545; R.S.1913, § 6746; C.S.1922, § 6287; C.S.1929, § 79-219; R.S.1943, § 79-226; Laws 1949, c. 256, § 191, p. 754; Laws 1993, LB 348, § 23; R.S.1943, (1994), § 79-507; Laws 1996, LB 900, § 759; Laws 1997, LB 345, § 40.

## 79-10,114 Class II, III, IV, or VI school district; property; sale; proceeds of sale; use.

No school property of any kind belonging to any Class II, III, IV, or VI school district shall be sold by the school board or board of education except at a regular meeting of the board and with an affirmative recorded vote of at least two-thirds of all the members of the board. Proceeds of sale of school property sold as provided in this section may be held separately from other funds of the school district and may be used for any school purpose as the board may determine, including, but not limited to, acquiring sites for school buildings or teacherages and purchasing existing buildings for use as school buildings or teacherages, including the sites upon which such buildings are located, and the erection, alteration, equipping, and furnishing of school buildings or teacherages.

**Source:** Laws 1881, c. 78, subdivision XIV, § 21, p. 383; R.S.1913, § 6968; C.S.1922, § 6602; C.S.1929, § 79-2520; R.S.1943, § 79-2523; Laws 1949, c. 256, § 208, p. 759; Laws 1971, LB 524, § 1; Laws 1993, LB 348, § 24; R.S.1943, (1994), § 79-521; Laws 1996, LB 900, § 760.

Affirmative recorded vote of at least two-thirds of all the members of the board at a regular meeting is mandatory. *Hand*

*v. School Dist. of City of Sidney*, 140 Neb. 874, 2 N.W.2d 313 (1942).

## 79-10,115 Class IV or V school district; sale of property; conditions.

School property of any kind belonging to any Class IV or V district shall not be sold by the board of education except at a regular meeting and with an affirmative recorded vote of at least two-thirds of all the members of the board.

**Source:** Laws 1917, c. 225, § 19, p. 554; C.S.1922, § 6628; C.S.1929, § 79-2619; R.S.1943, § 79-2619; Laws 1949, c. 256, § 217, p. 762; R.S.1943, (1994), § 79-530; Laws 1996, LB 900, § 761.

**79-10,116 Class IV or V school district; bonds; purchase before maturity.**

If it is deemed advisable by the board of education of a Class IV or V school district to purchase bonds issued by the district before maturity, the treasurer shall sell to the highest bidder in the open market, and in a manner prescribed by the board, such bonds or securities as belong to the school funds and the proceeds thereof shall apply to purchase of bonds issued by the district.

**Source:** Laws 1891, c. 45, § 27, p. 327; R.S.1913, § 7033; C.S.1922, § 6664; C.S.1929, § 79-2727; R.S.1943, § 79-2731; Laws 1949, c. 256, § 219, p. 762; R.S.1943, (1994), § 79-532; Laws 1996, LB 900, § 762.

**79-10,117 Class III or VI school district; teacherage; site; purchase or lease; powers of voters at election or annual or special meeting; tax.**

The legal voters of any Class III or VI school district have the power, at an election or at any annual or special meeting, to (1) direct the purchasing or leasing of any appropriate site and the building, hiring, or purchasing of a teacherage for the purpose of providing housing facilities for the school employees of the district, (2) determine the amount necessary to be expended for such purposes the succeeding year, and (3) vote on a tax on the property of the district for the payment of the amount.

**Source:** Laws 1953, c. 300, § 3, p. 1011; Laws 1959, c. 401, § 1, p. 1361; R.S.1943, (1994), § 79-541; Laws 1996, LB 900, § 763; Laws 1997, LB 345, § 41.

**79-10,118 Class III or VI school district; teacherage; tax; election.**

A tax to establish a special fund for the building, hiring, or purchasing of a teacherage for the purpose of providing housing facilities for the school employees of any Class III or VI district may be levied when authorized by fifty-five percent of the legal voters voting on the proposition. The notice of the proposal to establish such special fund shall include the sum to be raised or the amount of the tax to be levied, the period of years, and the time of its taking effect. If fifty-five percent of the legal voters voting at any such election vote in favor of the proposition, the result of such election shall be certified to the county board which, upon being satisfied that all the requirements have been substantially complied with, shall cause the proceedings to be entered upon the record of the county board and shall make an order that the levy be made in accordance with the election result and collected as other taxes.

**Source:** Laws 1953, c. 300, § 4, p. 1011; R.S.1943, (1994), § 79-542; Laws 1996, LB 900, § 764; Laws 1997, LB 345, § 42.

**79-10,119 Class III, IV, or V school district; real estate for future sites outside district; annexation; effect.**

A Class III, IV, or V school district may purchase, acquire, own, manage, and hold title to real estate for future school sites which at the time of such purchasing or acquiring is outside such school district in a territory not more than three miles beyond the limits of such district but contiguous thereto. Such district shall not erect school buildings on the real estate prior to the inclusion of such real estate within the boundaries of such a school district. If the real estate so acquired adjoins the purchaser's district, the acquisition of the real estate constitutes an annexation of such real estate to the purchaser's district. The intervention of a street, road, or highway between the real estate to be acquired and the purchaser's district does not preclude such real estate from being considered as adjoining the purchaser's district.

**Source:** Laws 1955, c. 309, § 2, p. 953; Laws 1957, c. 349, § 1, p. 1193; R.S.1943, (1994), § 79-543; Laws 1996, LB 900, § 765.

**79-10,120 Class II, III, IV, V, or VI school district; board of education; special fund for sites and buildings; levy of taxes.**

The school board or board of education of a Class II, III, IV, V, or VI school district may establish a special fund for purposes of acquiring sites for school buildings or teacherages, purchasing existing buildings for use as school buildings or teacherages, including the sites upon which such buildings are located, and the erection, alteration, equipping, and furnishing of school buildings or teacherages and additions to school buildings for elementary and high school grades and for no other purpose. For school districts that are not members of learning communities, the fund shall be established from the proceeds of an annual levy, to be determined by the board, of not to exceed fourteen cents on each one hundred dollars upon the taxable value of all taxable property in the district which shall be in addition to any other taxes authorized to be levied for school purposes. Such tax shall be levied and collected as are other taxes for school purposes. For school districts that are members of a learning community, such fund shall be established from the proceeds of the learning community special building funds levy directed to the school district for such purpose pursuant to subdivision (2)(g) of section 77-3442 and the proceeds of any school district special building fund levy pursuant to subdivision (2)(c) of section 77-3442.

**Source:** Laws 1963, c. 462, § 1, p. 1490; R.R.S.1943, § 79-811; Laws 1969, c. 49, § 4, p. 268; Laws 1979, LB 187, § 237; R.S.1943, (1987), § 79-548.01; Laws 1991, LB 511, § 53; Laws 1992, LB 245, § 54; Laws 1992, LB 719A, § 190; R.S.1943, (1994), § 79-547.04; Laws 1996, LB 900, § 766; Laws 2006, LB 1024, § 100; Laws 2007, LB641, § 31.

The levying of taxes for accumulation of funds is within the constitutional provision that "necessary revenue" of the state and its governmental subdivisions be raised by taxation in such manner as the Legislature might direct. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

This section is not an unconstitutional delegation of legislative authority. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

**79-10,121 Class I school district; schoolhouse; site; facilities; purchase or lease; powers of voters at annual or special meeting; tax.**

Legal voters of a Class I school district may at any annual or special meeting (1) direct the purchasing or leasing of any appropriate site and the building, hiring, or purchasing of a schoolhouse, a teacherage for the purpose of

providing housing facilities for the school employees of the district, or other school buildings, (2) determine the amount necessary to be expended for such purposes the succeeding year, and (3) vote a tax on the property of the district for the payment of the amount.

**Source:** Laws 1881, c. 78, subdivision II, § 10, p. 340; Laws 1889, c. 78, § 5, p. 543; R.S.1913, § 6739; C.S.1922, § 6277; C.S.1929, § 79-210; R.S.1943, § 79-210; Laws 1949, c. 256, § 190, p. 754; Laws 1953, c. 300, § 1, p. 1010; R.S.1943, (1987), § 79-506; Laws 1991, LB 511, § 48; Laws 1992, LB 245, § 55; R.S.1943, (1994), § 79-606; Laws 1996, LB 900, § 767; Laws 1997, LB 345, § 43.

A school athletic facility is a "schoolhouse or other building" within the meaning of this section. *Banks v. Board of Education of Chase County*, 202 Neb. 717, 277 N.W.2d 76 (1979).

Under former law purchase of residence for teachers was illegal. *Fulk v. School District No. 8 of Lancaster County*, 155 Neb. 630, 53 N.W.2d 56 (1952).

Change of site may be authorized, but schoolhouse may not be moved prior to acquisition of title to new site. *McMahon v. District No. 66 of Antelope County*, 80 Neb. 156, 113 N.W. 1046 (1907).

Board cannot buy or lease site except by authority of electors. *Ladd v. School Dist. No. 6 of Hall County*, 70 Neb. 438, 97 N.W. 594 (1903).

Determination by electors of kind and cost of building is binding on board. *School Dist. No. 35 of Sherman County v. Randolph*, 57 Neb. 546, 77 N.W. 1073 (1899); *Gehling v. School Dist. No. 57 of Richardson County*, 10 Neb. 239, 4 N.W. 1023 (1880).

Electors alone have power to direct building of schoolhouse. They may select agents to superintend construction. *Mizera v. Auten*, 45 Neb. 239, 63 N.W. 399 (1895).

Building contract must be made with reference to funds available. *School Dist. No. 2 of Dixon County v. Stough*, 4 Neb. 357 (1876).

**79-10,122 Class I school district; schoolhouse; site; facilities; tax; election; special fund; establish; restriction.**

A tax to establish a special fund for the purpose of erection or repair of a schoolhouse and equipment or the building, and purchasing existing buildings for use as school buildings, including the sites upon which such buildings are located, hiring, or purchasing of a teacherage for the purpose of providing housing facilities for the school employees of any Class I school district may be levied when authorized by fifty-five percent of the legal voters voting on the proposition. The notice of the proposal to establish the special fund shall include the sum to be raised or the amount of the tax to be levied, the period of years, and the time of its taking effect. The tax shall be subject to the restrictions of section 79-10,124 as to maximum amount and term. If fifty-five percent of the legal voters voting at any such election vote in favor thereof, the result of such election shall be certified to the county board which, upon being satisfied that all the requirements have been substantially complied with, shall enter the proceedings upon the record of the county board and shall make an order that the levy be made and collected as other taxes.

**Source:** Laws 1951, c. 275, § 1, p. 926; Laws 1953, c. 300, § 2, p. 1011; Laws 1969, c. 49, § 3, p. 267; Laws 1971, LB 292, § 16; R.S. 1943, (1987), § 79-506.01; Laws 1991, LB 511, § 49; Laws 1992, LB 245, § 56; R.S.1943, (1994), § 79-607; Laws 1996, LB 900, § 768; Laws 1997, LB 345, § 44; Laws 1998, LB 1219, § 20.

**79-10,123 Class I school district; schoolhouse; site; facilities; tax; contract; surplus funds.**

The provisions of sections 23-504 to 23-507 which relate to special funds for erection of courthouses shall apply so far as practicable to the procedure under sections 79-10,122 to 79-10,125. The school board or district trustees have power to contract for the erection or repair of the building under the same

restrictions as the county board in case of the erection of a courthouse, and any residue of such tax shall be credited to the school district general fund.

**Source:** Laws 1951, c. 275, § 2, p. 926; R.S.1943, (1987), § 79-506.02; Laws 1991, LB 511, § 50; Laws 1992, LB 245, § 57; R.S.1943, (1994), § 79-608; Laws 1996, LB 900, § 769.

**79-10,124 Class I school district; schoolhouse; site; facilities; tax; limitation.**

The amount of special tax levied under sections 79-10,122 to 79-10,125 shall not exceed five cents on each one hundred dollars upon the taxable value of all taxable property in the school district above the amount allowed by law for general school purposes when combined with the tax levied by a Class I district under section 79-10,110, and the total amount voted for the period of years shall not exceed five percent of the taxable valuation of the school district.

For Class I districts, the school board of the primary high school district designated pursuant to section 79-1083.02 must approve any use of the special tax levied under sections 79-10,110 and 79-10,122 to 79-10,125 and provide written notification of such approval to the Class I district school board.

**Source:** Laws 1951, c. 275, § 3, p. 927; Laws 1953, c. 287, § 84, p. 979; Laws 1979, LB 187, § 234; R.S.1943, (1987), § 79-506.03; Laws 1991, LB 511, § 51; Laws 1992, LB 245, § 58; Laws 1992, LB 719A, § 191; R.S.1943, (1994), § 79-609; Laws 1996, LB 900, § 770; Laws 1998, LB 1219, § 21; Laws 1999, LB 813, § 35.

**79-10,125 Class I school district; schoolhouse; site; facilities; levy; warrants; limitation.**

If fifty-five percent of the legal voters voting on the proposition under section 79-10,122 vote in favor of the proposition, the school board may at once proceed to carry out the purpose of the levy, and to do so the board may issue warrants as needed, not to exceed eighty-five percent of the amounts raised by the levy, against the fund voted. The interest on any such warrants shall be paid annually.

**Source:** Laws 1951, c. 275, § 4, p. 927; R.S.1943, (1987), § 79-506.04; Laws 1991, LB 511, § 52; Laws 1992, LB 245, § 59; R.S.1943, (1994), § 79-610; Laws 1996, LB 900, § 771; Laws 1997, LB 345, § 45.

**79-10,126 Class V school district not member of learning community; school tax; additional levy; funds established.**

A Class V school district that is not a member of a learning community shall establish (1) for the general operation of the schools, such fund as will result from an annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the board of education determines to be necessary for such purpose, (2) a fund resulting from an annual amount of tax to be determined by the board of education of not to exceed fourteen cents on each one hundred dollars upon the taxable value of all the taxable property in the district for the purpose of acquiring sites of school buildings and the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, which tax levy shall be used for no other purposes, and (3) a further fund resulting from an annual amount of tax to be determined by the

board of education to pay interest on and retiring, funding, or servicing of bonded indebtedness of the district.

**Source:** Laws 1939, c. 112, § 1, p. 485; C.S.Supp.,1941, § 79-2722; R.S.1943, § 79-2724; Laws 1945, c. 214, § 3, p. 629; Laws 1947, c. 298, § 3, p. 914; Laws 1949, c. 256, § 266, p. 780; Laws 1951, c. 285, § 2, p. 952; Laws 1953, c. 307, § 2, p. 1023; Laws 1955, c. 320, § 3, p. 989; Laws 1959, c. 407, § 2, p. 1370; Laws 1969, c. 145, § 44, p. 699; Laws 1971, LB 292, § 20; Laws 1979, LB 187, § 241; Laws 1992, LB 719A, § 192; R.S.1943, (1994), § 79-1007.02; Laws 1996, LB 900, § 772; Laws 2006, LB 1024, § 101.

The county board of equalization makes the levy of taxes for a school district. C. R. T. Corp. v. Board of Equalization, 172 Neb. 540, 110 N.W.2d 194 (1961).

**79-10,126.01 Class V school district member of learning community; school tax; additional levy; funds established.**

A Class V school district that is a member of a learning community shall establish (1) for the general operation of the schools, such fund as will result from distributions pursuant to section 79-1073 from the learning community levy and any annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the board of education determines to be necessary for such purpose and as authorized pursuant to subdivision (2)(c) of section 77-3442, (2) for the purpose of acquiring sites of school buildings and the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, a fund as will result from distributions from the learning community levy pursuant to section 79-1073.01 and any annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the school board determines to be necessary for such purpose and as authorized pursuant to subdivision (2)(c) of section 77-3442, which fund shall be used for no other purposes, and (3) a further fund resulting from an annual amount of tax to be determined by the board of education to pay interest on and for retiring, funding, or servicing of bonded indebtedness of the district.

**Source:** Laws 2006, LB 1024, § 102; Laws 2007, LB641, § 32.

**79-10,127 Class V school district; sale of site; proceeds; use.**

Whenever it is determined by the board of education of a Class V school district that the real estate described as Capitol Square, being a subdivision in the city of Omaha, Douglas County, Nebraska, and being within the northwest quarter of the northwest quarter of section twenty-two, township fifteen, north, range thirteen, east of the sixth principal meridian, together with the south twelve feet of vacated Davenport Street adjoining such premises on the north, which was deeded by the State of Nebraska to the city in which such school district is located, for educational purposes, is no longer suitable for such use, and that it would be in the best educational interests of such city and school district that such real estate and the buildings and improvements erected and maintained thereon by the school district be sold, and the proceeds of such sale used for the purchase of another school site and the erection of such a school building or buildings thereon as are authorized under sections 79-10,127 to 79-10,135, such property may be sold pursuant to the provisions of such

sections or pursuant to section 79-10,136, notwithstanding restrictions in the original deed to the city prohibiting the sale and conveyance of such property.

**Source:** Laws 1955, c. 319, § 1, p. 984; Laws 1982, LB 845, § 1; R.S.1943, (1994), § 79-1061; Laws 1996, LB 900, § 773.

**79-10,128 Class V school district; sale of site; petition; contents.**

The school district may file a petition in the district court of the county in which such real estate as described in section 79-10,127 is situated, setting forth the terms and conditions of the original deed from the State of Nebraska, the provisions of sections 79-10,127 to 79-10,135, and the findings of the board of education as to the desirability of sale.

**Source:** Laws 1955, c. 319, § 2, p. 985; R.S.1943, (1994), § 79-1062; Laws 1996, LB 900, § 774.

**79-10,129 Class V school district; sale of site; petition; parties to action; summons.**

The city of the metropolitan class holding title to such real estate as described in section 79-10,127 and the State of Nebraska, grantor in the original deed to the city, shall be made parties defendant in such proceedings and served with summons as in civil actions.

**Source:** Laws 1955, c. 319, § 3, p. 985; R.S.1943, (1994), § 79-1063; Laws 1996, LB 900, § 775.

**79-10,130 Class V school district; sale of site; hearing; decree.**

If, after an examination of the pleadings of the respective parties and hearing the evidence, it appears to the court (1) that the record title of the city of the metropolitan class in such real estate as described in section 79-10,127 is restricted to educational purposes, (2) that the exclusive control of all property within the school district used for educational purposes is reposed in the school district, (3) that such city and the State of Nebraska have no beneficial, proprietary, or reversionary interest therein, (4) that the state has by sections 79-10,127 to 79-10,135 authorized the removal of the restrictions against the sale of the property, and (5) that it is in the public interest and for the best interests of the school district that such property be sold and the proceeds of such sale be used by the school district for the purchase of a school site in a different location and the construction of such a school building or buildings thereon as are authorized under sections 79-10,127 to 79-10,135, then the court shall enter a decree terminating the restrictions against alienation of record, finding that the beneficial interest in the property is in the school district, and directing the sale of the property in accordance with the provisions of sections 79-10,127 to 79-10,135.

**Source:** Laws 1955, c. 319, § 4, p. 985; R.S.1943, (1994), § 79-1064; Laws 1996, LB 900, § 776.

**79-10,131 Class V school district; sale of site; appraisers; appointment; oath.**

The court shall, after entry of the decree under section 79-10,130, appoint three appraisers to ascertain the fair value of the real estate as described in section 79-10,127 and the improvements thereon. Such appraisers shall be disinterested freeholders residing within the school district who are qualified by

knowledge and experience to determine the fair value of property of the particular character involved. The appraisers shall, before entering upon their duties, take and subscribe an oath that they will support the United States Constitution and the Constitution of Nebraska and will faithfully and impartially discharge their duties as required by law.

**Source:** Laws 1955, c. 319, § 5, p. 986; R.S.1943, (1994), § 79-1065; Laws 1996, LB 900, § 777.

**79-10,132 Class V school district; sale of site; appraisers; compensation; sheriff; notice of sale; publication; fees.**

Upon the filing of the report of the appraisers appointed in accordance with section 79-10,131, the court shall fix the fees allowed such appraisers for their services, which fees shall be paid by the school district. If the board of education is satisfied with the amount of such appraisal, the court, upon the application by the district, shall issue an order directing the sheriff of the county to sell the property as described in section 79-10,127 at public auction to the highest cash bidder, but for not less than ninety percent of the appraised value. Notice of such sale and the time and place where the sale shall be held shall be given by publication three consecutive weeks in some legal newspaper published in the county where the property is located or, if none is published in such county, in a legal newspaper of general circulation in the county where the property is located. Proof of such publication shall be made by the affidavit of the publisher to be filed in the proceedings. In making such sale, the sheriff shall act in his or her official capacity and shall be liable on his or her official bond for all his or her acts incident to such sale. The sheriff shall receive for his or her services an amount to be determined by the court, to be paid by the school district as part of the costs of the action.

**Source:** Laws 1955, c. 319, § 6, p. 986; Laws 1986, LB 960, § 43; R.S.1943, (1994), § 79-1066; Laws 1996, LB 900, § 778.

**79-10,133 Class V school district; sale of site; sheriff; report of sale; confirmation.**

The sheriff shall file a report of the proceedings pursuant to the order of sale under section 79-10,132. If it appears, upon the filing of such report, that the sale has in all respects been made in conformity to the provisions of sections 79-10,127 to 79-10,135, that the property as described in section 79-10,127 was sold for its fair value under the circumstances and conditions of the sale and for not less than ninety percent of its appraised value, and that a subsequent sale would not realize a greater amount, the court shall enter an order (1) confirming the sale, (2) directing the city to convey title to the property to the purchaser, free and clear of all restrictions upon its use previously imposed by the State of Nebraska, and (3) quieting title in such purchaser.

**Source:** Laws 1955, c. 319, § 7, p. 987; R.S.1943, (1994), § 79-1067; Laws 1996, LB 900, § 779.

**79-10,134 Class V school district; sale of site; decree; appeal.**

Any party to the proceedings under sections 79-10,127 to 79-10,133 shall have the right of appeal, as in other civil actions, from the final order and judgment of the district court to the Court of Appeals.

**Source:** Laws 1955, c. 319, § 8, p. 987; Laws 1991, LB 732, § 146; R.S.1943, (1994), § 79-1068; Laws 1996, LB 900, § 780.

**79-10,135 Class V school district; sale of site; sheriff; disbursement of proceeds; disposition.**

If, upon the final determination of the action, the sale under sections 79-10,127 to 79-10,134 is ratified and confirmed, the court shall direct the sheriff to pay to the school district the proceeds of such sale and shall direct the board of education of such school district to place the proceeds of the sale in the fund set apart by law for the purchase of school sites and the construction of high school buildings, to be used for the purchase of a site and the construction of such school buildings and for no other purpose.

**Source:** Laws 1955, c. 319, § 9, p. 987; R.S.1943, (1994), § 79-1069; Laws 1996, LB 900, § 781.

**79-10,136 Class V school district; conveyance of site; conditions; proceeds.**

Whenever it is determined by the board of education of a Class V school district that it would be in the best educational interests of the school district that any portion of the real estate legally described in section 79-10,127 and any buildings and improvements erected and maintained thereon be conveyed to the United States, the State of Nebraska, any political subdivision of the state, or any nonprofit corporation which is legally organized and existing under the laws of the state, such portion of the property may be conveyed by such city and school district upon such terms and conditions as are acceptable to such board of education, notwithstanding any restrictions in the original deed to the city prohibiting such conveyance. Such conveyance shall not be subject to the provisions of sections 79-10,128 to 79-10,135. Any proceeds or other consideration received by the school district from such conveyance shall belong solely to the school district, to be used by it for such purposes authorized by the laws governing such school district.

**Source:** Laws 1982, LB 845, § 2; R.S.1943, (1994), § 79-1070; Laws 1996, LB 900, § 782.

**(f) SCHOOL BREAKFAST PROGRAM****79-10,137 Legislative findings.**

The Legislature finds that, for Nebraska to compete effectively in the world, it must have an educated and productive work force. In order to have an educated and productive work force, it must prepare its children to learn, and in order to do so the children must be well-nourished. The Legislature finds that school breakfast and lunch programs are integral parts of Nebraska's educational system.

**Source:** Laws 2000, LB 26, § 1.

**79-10,138 Program qualifications; reimbursement.**

The State Department of Education shall reimburse each qualified public school in Nebraska a portion of the cost of such school's school breakfast program in the amount of five cents per school breakfast served by such school in the second preceding school year. To qualify, a school district shall operate a school lunch program and shall submit information regarding the number of breakfasts served in a manner prescribed by the department. The Legislature shall appropriate money from the General Fund to carry out this section.

**Source:** Laws 2000, LB 26, § 2; Laws 2003, LB 796, § 1; Laws 2007, LB73, § 1.

**79-10,139 Rules and regulations.**

Payments pursuant to section 79-10,138 shall be made to each school district according to rules and regulations for disbursements adopted and promulgated by the State Department of Education.

**Source:** Laws 2000, LB 26, § 3.

**(g) SUMMER FOOD SERVICE PROGRAM****79-10,140 Summer Food Service Program; terms, defined.**

For purposes of sections 79-10,140 to 79-10,142:

(1) Department means the State Department of Education; and

(2) Sponsor means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp that provides food service similar to food service made available to children during the school year under the school lunch program or the school breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.

**Source:** Laws 2012, LB1090, § 1.

**79-10,141 Summer Food Service Program; legislative intent; department; duties; preference for grants; applications.**

(1) Because children are susceptible to hunger in the summertime, resulting in negative health effects, the Legislature intends, as a state nutrition and health policy, that the State of Nebraska's participation in the Summer Food Service Program of the United States Department of Agriculture be strengthened where it is needed to provide adequate nutrition for children.

(2) To encourage participation and utilization of the Summer Food Service Program, the department shall:

(a) Provide information to sponsors concerning the benefits and availability of the Summer Food Service Program; and

(b) Award grants of up to fifteen thousand dollars on a competitive basis to sponsors approved by the department. Grants awarded under this section may be used for nonrecurring expenses incurred in initiating or expanding services under the Summer Food Service Program, including, but not limited to, the acquisition of equipment, salaries of staff, training of staff in new capacities, outreach efforts to publicize new or expanded services under the Summer Food Service Program, minor alterations to accommodate new equipment, computer point-of-service systems for food service, and the purchase of vehicles for transporting food to sites. Funds shall not be used for food, computers, except point-of-service systems, or capital outlay. The total amount of grants awarded under this section shall be limited to one hundred forty thousand dollars per fiscal year.

(3) In awarding grants under this section, the department shall give preference in the following order of priority to:

(a) Sponsors located within the boundaries of school districts in which fifty percent or more of the students apply and qualify for free and reduced-price lunches or located within the boundaries of a census tract in which fifty percent

or more of the children fall under the poverty threshold as defined by the United States Department of Agriculture;

(b) Sponsors in which health or education activities are emphasized; and

(c) Sponsors that participate in the Summer Food Service Program at the time of grant application.

(4) Sponsors may apply for grants under this section by:

(a) Submitting to the department a plan to start or expand services under the Summer Food Service Program;

(b) Agreeing to operate the Summer Food Service Program for a period of not less than two years; and

(c) Assuring that the expenditure of funds from state and local resources for the maintenance of other child nutrition programs administered by the department shall not be diminished as a result of grants received under this section.

**Source:** Laws 2012, LB1090, § 2.

**79-10,142 Summer Food Service Program; department; collect data; report.**

The department shall collect data regarding the number of sponsors, the number of sites utilized by sponsors, and the number of children served as a result of the grants awarded under section 79-10,141. The department shall submit a report electronically to the Education Committee of the Legislature on this data not later than December 1 each year.

**Source:** Laws 2012, LB1090, § 3; Laws 2013, LB222, § 34.

## ARTICLE 11

### SPECIAL POPULATIONS AND SERVICES

#### Cross References

**Commission for the Deaf and Hard of Hearing**, see section 71-4720 et seq.

**Infants and toddlers**, coordination of services, see the Early Intervention Act, section 43-2501.

**Parenting Act**, see section 43-2920.

**Quality Child Care Act**, see section 43-2601.

**State aid to education**, see the Tax Equity and Educational Opportunities Support Act, section 79-1001.

**Step Up to Quality Child Care Act**, see section 71-1952.

**Transitional services**, see section 83-1225.

#### (a) EARLY CHILDHOOD EDUCATION

##### Section

- 79-1101. Legislative findings and intent.
- 79-1102. Early Childhood Training Center; established; purpose; duties; statewide training program; established.
- 79-1102.01. Repealed. Laws 2013, LB 495, § 5.
- 79-1103. Early Childhood Education Grant Program; established; administration; priorities; programs; requirements; report; hearing; endowment agreement; effect.
- 79-1104. Before-and-after-school or prekindergarten services; transportation services; school board; powers and duties.
- 79-1104.01. Nebraska Early Childhood Education Endowment; endowment provider; requirements; endowment agreement; Early Childhood Education Endowment Fund; Early Childhood Education Endowment Cash Fund; created; investment.
- 79-1104.02. Early Childhood Education Endowment Cash Fund; use; grants; program requirements.
- 79-1104.03. Early Childhood Education Endowment Board of Trustees; created; administrative support.
- 79-1104.04. Board of trustees; members; terms; expenses.

## SCHOOLS

### Section

- 79-1104.05. Early Childhood Education Endowment Fund; funding.
- (b) GIFTED CHILDREN AND LEARNERS WITH HIGH ABILITY
- 79-1105. State Department of Education; education for learners with high ability; consultant; employ.
- 79-1106. Learners with high ability; purpose of sections.
- 79-1107. Learners with high ability; terms, defined.
- 79-1108. Learners with high ability; identification and programs.
- 79-1108.01. Learners with high ability; school districts; duties.
- 79-1108.02. Learners with high ability; curriculum programs; funding.
- 79-1108.03. Learners with high ability; rules and regulations.
- 79-1109. Repealed. Laws 1997, LB 347, § 59.
- (c) SPECIAL EDUCATION
- SUBPART (i)—SPECIAL EDUCATION ACT
- 79-1110. Act, how cited.
- 79-1111. Legislative intent.
- 79-1112. Repealed. Laws 1998, LB 904, § 3.
- 79-1113. Definitions, where found.
- 79-1114. Adjusted average per pupil cost of the preceding year, defined.
- 79-1115. Allowable costs, defined.
- 79-1115.01. Assistive technology device, defined.
- 79-1116. Average per pupil cost of the service agency, defined.
- 79-1117. Child with a disability, defined.
- 79-1118. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.
- 79-1118.01. Disability, defined; diagnosis.
- 79-1119. Excess cost, defined.
- 79-1119.01. Interim-program school, defined.
- 79-1120. Transferred to section 79-1118.01.
- 79-1121. Related services, defined.
- 79-1122. Residential care, defined.
- 79-1123. Repealed. Laws 2000, LB 1243, § 10.
- 79-1124. Service agency, defined.
- 79-1125. Special education, defined.
- 79-1125.01. Support services, defined.
- 79-1126. Act; to whom applicable; Division of Vocational Rehabilitation; duties.
- 79-1127. Special education; board; duties.
- 79-1128. Special education programs; school district; provide; manner; use of funds; failure to offer acceptable program; effect.
- 79-1129. Children with disabilities; types of services to be furnished; transportation; reimbursement; special instruction.
- 79-1130. Transportation services; legislative intent; State Department of Education; duties; cooperative arrangement.
- 79-1131. Education programs; children with disabilities who are less than five years of age; voluntary.
- 79-1132. Special education programs; children less than five years of age; State Department of Education provide grants; to whom; procedure.
- 79-1133. Special education programs; student less than five years of age; school district; amount paid to service agency; determination.
- 79-1134. Repealed. Laws 1999, LB 813, § 62.
- 79-1135. Children with disabilities who are less than five years of age; regional plan of services; school district; participation; supplementary amendments.
- 79-1136. Sections, how construed.
- 79-1137. Legislative findings and intent.
- 79-1138. Disabilities; assessment, identification, and verification of need for services; State Board of Education; duties.
- 79-1139. Special education programs and services; children eligible.
- 79-1140. School district; amount paid to service agency; determination.
- 79-1141. Repealed. Laws 1999, LB 813, § 62.
- 79-1142. State Department of Education; reimbursement for special education programs and support services; to whom; manner; limitations.

## SPECIAL POPULATIONS AND SERVICES

### Section

- 79-1143. Fiscal year for purposes of act.
- 79-1144. Children with disabilities; education; funds; channeled through office of State Department of Education; expenditures authorized.
- 79-1145. Appropriation of General Funds; limitation.
- 79-1146. Handicapped children; school district; educational service unit; contract for services.
- 79-1147. Temporary residential care; payment by state; when.
- 79-1148. Children with disabilities; regional networks, schools, or centers; authorized.
- 79-1149. Regional network, school, or center; admission; rules and regulations.
- 79-1150. Regional network, school, or center; remittance of money.
- 79-1151. Residential schools; emergency cash fund; established; use.
- 79-1152. Residential care; placement; requirements; appeal; cost; maximum rate; established.
- 79-1153. Residential placement; subsequent duties.
- 79-1154. State Board of Education; review special training and educational programs.
- 79-1155. Special education programs; reports; special education program application; review and approval.
- 79-1156. Special education and support services programs; coordination; application required.
- 79-1157. Special education programs; review; evaluation.
- 79-1158. Special education and support services programs; reimbursement; when.
- 79-1159. State Department of Education; school district; technical assistance; advisory capacity.
- 79-1159.01. State Department of Education; assistive technology devices registry.
- 79-1160. State Department of Education; adopt rules and regulations.
- 79-1161. Child with a disability; school district; protect rights of child; assignment of surrogate parent.
- 79-1162. Identification, evaluation, or educational placement; hearing; copy of procedures provided; reimbursement.
- 79-1163. State Department of Education; conduct hearings; hearing officers; employed; qualifications; jurisdiction.
- 79-1164. Hearing; hearing officer; duties.
- 79-1165. Hearing; party; rights; enumerated.
- 79-1166. Hearing officer; subpoena witnesses; fees and expenses; failure to respond; contempt.
- 79-1167. Hearing officer; findings, decision, or order; judicial review.
- 79-1168. Repealed. Laws 2009, LB 549, § 53.
- 79-1169. Repealed. Laws 2009, LB 549, § 53.
- 79-1170. Repealed. Laws 2009, LB 549, § 53.
- 79-1171. Repealed. Laws 2009, LB 549, § 53.
- 79-1172. Repealed. Laws 2009, LB 549, § 53.
- 79-1173. Repealed. Laws 2009, LB 549, § 53.
- 79-1174. Repealed. Laws 2009, LB 549, § 53.
- 79-1175. Repealed. Laws 2009, LB 549, § 53.
- 79-1176. Repealed. Laws 2009, LB 549, § 53.
- 79-1177. Repealed. Laws 2009, LB 549, § 53.
- 79-1178. Repealed. Laws 2009, LB 549, § 53.
- 79-1179. Repealed. Laws 1998, LB 904, § 3.
- 79-1180. Repealed. Laws 1998, LB 904, § 3.
- 79-1181. Repealed. Laws 1998, LB 904, § 3.
- 79-1182. Repealed. Laws 1998, LB 904, § 3.
- 79-1183. Repealed. Laws 1998, LB 904, § 3.
- 79-1183.01. Repealed. Laws 2000, LB 1135, § 34.
- 79-1184. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.

### SUBPART (ii)—DEPARTMENT DUTIES

- 79-1185. Transferred to section 79-1125.01.
- 79-1186. Repealed. Laws 1999, LB 813, § 62.
- 79-1187. Repealed. Laws 1998, Spec. Sess., LB 1, § 63.

## SCHOOLS

### Section

79-1188. Special education programs and support services; waiver of rules and regulations process; board; powers and duties.

#### (d) BRIDGE PROGRAMS

79-1189. Legislative findings.

79-1190. Terms, defined.

79-1191. Legislative appropriation; department; provide grants to establish bridge programs.

79-1192. Department; establish process for awarding grants; priority.

79-1193. Recipient of bridge program grant; collect and provide data.

79-1194. Rules and regulations.

79-1195. Department of Health and Human Services; cooperate with applicants and recipients.

79-1196. Sections; termination.

79-1197. Repealed. Laws 1997, LB 347, § 59.

#### (e) PROGRAMS FOR STUDENTS WITH HEARING IMPAIRMENTS

79-1198. Repealed. Laws 1999, LB 813, § 62.

79-1199. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,100. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,101. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,102. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,103. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,104. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,105. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,106. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,107. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

79-11,108. Repealed. Laws 1998, Spec. Sess., LB 1, § 62.

#### (f) STUDENTS WHO ARE BLIND OR VISUALLY IMPAIRED

79-11,109. Nebraska Center for the Education of Children who are Blind or Visually Impaired; State Department of Education; powers.

79-11,110. Center; purpose.

79-11,111. Repealed. Laws 1999, LB 813, § 62.

79-11,112. Repealed. Laws 1999, LB 813, § 62.

79-11,113. Repealed. Laws 1999, LB 813, § 62.

79-11,114. Repealed. Laws 1999, LB 813, § 62.

79-11,115. Repealed. Laws 1999, LB 813, § 62.

79-11,116. Repealed. Laws 1999, LB 813, § 62.

79-11,117. Repealed. Laws 1999, LB 813, § 62.

79-11,118. Repealed. Laws 1999, LB 813, § 62.

79-11,119. Repealed. Laws 1999, LB 813, § 62.

79-11,120. Repealed. Laws 1999, LB 813, § 62.

#### (g) VOCATIONAL REHABILITATION

79-11,121. Division of Rehabilitation Services; established.

79-11,122. Division; administration; director; appointment; duties.

79-11,123. Division; rehabilitation services; furnish; exceptions.

79-11,124. Rehabilitation services; board; powers; duties.

79-11,125. Rehabilitation services; federal funds; State Treasurer; duties.

79-11,126. Division; budget estimates; federal funds; authority to comply with requirements.

79-11,127. Rehabilitation services; eligibility.

79-11,128. Rehabilitation services; aggrieved person; State Board of Education; fair hearing.

79-11,129. Rehabilitation services; unlawful acts.

79-11,130. State Board of Education; Secretary of the United States Department of Health and Human Services; agreement; purpose.

79-11,131. State Treasurer; custodian of funds; disbursement.

79-11,132. Interagency agreement with Department of Health and Human Services; matching of funds required.

## Section

## (h) ADULT EDUCATION

- 79-11,133. Adult Education Program; establishment; purpose.  
 79-11,134. Adult education; classes; authorized.  
 79-11,135. Adult Education Program; expenses; how paid.

## (i) SEAMLESS DELIVERY SYSTEM PILOT PROJECT

- 79-11,136. Repealed. Laws 2009, LB 549, § 53.  
 79-11,137. Repealed. Laws 2009, LB 549, § 53.  
 79-11,138. Repealed. Laws 2009, LB 549, § 53.  
 79-11,139. Repealed. Laws 2009, LB 549, § 53.  
 79-11,140. Repealed. Laws 2009, LB 549, § 53.  
 79-11,141. Repealed. Laws 2009, LB 549, § 53.

## (j) COMMUNITY-BASED NEUROBEHAVIORAL ACTION PLAN ACT

- 79-11,142. Repealed. Laws 2003, LB 667, § 26.  
 79-11,143. Repealed. Laws 2003, LB 667, § 26.  
 79-11,144. Repealed. Laws 2003, LB 667, § 26.  
 79-11,145. Repealed. Laws 2003, LB 667, § 26.  
 79-11,146. Repealed. Laws 2003, LB 667, § 26.  
 79-11,147. Repealed. Laws 2003, LB 667, § 26.  
 79-11,148. Repealed. Laws 2003, LB 667, § 26.  
 79-11,149. Repealed. Laws 2003, LB 667, § 26.

## (k) HIGH-NEEDS EDUCATION COORDINATOR

- 79-11,150. Repealed. Laws 2011, LB 333, § 18.

## (l) SPECIAL EDUCATION SERVICES TASK FORCE

- 79-11,151. Repealed. Laws 2009, LB 154, § 27.  
 79-11,152. Repealed. Laws 2009, LB 154, § 27.  
 79-11,153. Repealed. Laws 2009, LB 154, § 27.  
 79-11,154. Repealed. Laws 2009, LB 154, § 27.

## (m) STUDENT ACHIEVEMENT COORDINATOR

- 79-11,155. Student achievement coordinator; appointment; qualifications; duties.

## (a) EARLY CHILDHOOD EDUCATION

**79-1101 Legislative findings and intent.**

(1) The Legislature finds and declares that: (a) Early childhood education programs can assist children in achieving their potential as citizens, workers, and human beings and can strengthen families; (b) early childhood education has been proven to be a sound public investment of funds not only in assuring productive, taxpaying workers in the economy but also in avoidance of increasingly expensive social costs for those who drop out as productive members of society; (c) the key ingredient in an effective early childhood education program is a strong family development and support component because the role of the parent is of critical importance; (d) while all children can benefit from quality, developmentally appropriate early childhood education experiences, such experiences are especially important for at-risk infants and children; (e) current early childhood education programs serve only a fraction of Nebraska's children and the quality of current programs varies widely; (f) well-designed early childhood education programs increase the likelihood that children who participate will enter school prepared to achieve high standards; (g) effective early childhood education programs require staff with knowledge about child growth, development, and learning and family systems; and (h) both public and nonpublic programs which meet recognized standards of quality can address the growth, development, and learning needs of young children.

(2)(a) It is the intent of the Legislature and the public policy of this state to encourage schools and community-based organizations to work together to provide high-quality early childhood education programs for infants and young children which include family involvement, with the goal of assuring that every family in Nebraska has access to such programs for, at the minimum, the school year prior to the school year for which the child will be eligible to attend kindergarten. The purposes of sections 79-1101 to 79-1104.05 are to provide state assistance to selected school districts, cooperatives of school districts, and educational service units for early childhood education, to encourage coordination between public and private service providers of early childhood education and child care programs, and to provide state support for efforts to improve training opportunities for staff in such programs.

(b) It is the further intent of the Legislature that any additional funds appropriated on or after January 1, 2014, for FY2014-15 for early childhood education grants pursuant to section 79-1103 be used to assist schools and community-based organizations in working together to expand the access to such high-quality early childhood education programs for children for the school year prior to the school year for which the child will be eligible to attend kindergarten and that the unobligated balance of any such funds be reappropriated for such purpose for FY2015-16 and FY2016-17.

(3) For purposes of sections 79-1101 to 79-1104.05:

(a) Board of trustees means the Early Childhood Education Endowment Board of Trustees;

(b) Early childhood education program means any prekindergarten part-day or full-day program or in-home family support program with a stated purpose of promoting social, emotional, intellectual, language, physical, and aesthetic development and learning for children from birth to kindergarten-entrance age and family development and support;

(c) Endowment agreement means an agreement between the State Department of Education and an endowment provider entered into pursuant to section 79-1104.01; and

(d) Endowment provider means an endowment that has met the criteria described in section 79-1104.01 and that has entered into an endowment agreement.

**Source:** Laws 1990, LB 567, § 1; R.S.1943, (1994), § 79-3701; Laws 1996, LB 900, § 783; Laws 2001, LB 759, § 1; Laws 2006, LB 1256, § 1; Laws 2014, LB967, § 19.  
Effective date April 3, 2014.

#### Cross References

Provision of training for child development and early childhood education services, see section 43-2620.

**79-1102 Early Childhood Training Center; established; purpose; duties; statewide training program; established.**

(1) An Early Childhood Training Center shall be established within the State Department of Education. The purpose of the center is to train individuals who provide education and development activities for infants and young children and their parents. The center, taking into consideration existing public and private training efforts, shall provide support and assistance to schools and public and private providers of early childhood education services in develop-

ing training programs for staff. The center, in consultation with the Department of Health and Human Services, shall approve training that is used to satisfy child care licensing criteria for required training, annual inservice training, and training needed for participation or advancement in the quality rating and improvement system established pursuant to the Step Up to Quality Child Care Act. The center, taking into consideration existing public and private training efforts, shall also provide clearinghouse information and publications on available early childhood education training opportunities throughout the state.

(2) The center shall establish a statewide training program to support the development of parent education programs in local communities. The goal of this project is to train individuals who will be able to work with public and private providers of early childhood services to establish parent education programs in their communities.

**Source:** Laws 1990, LB 567, § 2; R.S.1943, (1994), § 79-3702; Laws 1996, LB 900, § 784; Laws 2007, LB231, § 1; Laws 2014, LB967, § 20. Effective date April 3, 2014.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

**79-1102.01 Repealed. Laws 2013, LB 495, § 5.**

**79-1103 Early Childhood Education Grant Program; established; administration; priorities; programs; requirements; report; hearing; endowment agreement; effect.**

(1)(a) The State Department of Education shall establish and administer the Early Childhood Education Grant Program. Upon the effective date of an endowment agreement, administration of the Early Childhood Education Grant Program with respect to programs for children from birth to age three shall transfer to the board of trustees. If there is no endowment agreement in effect, the department shall request proposals in accordance with this section for all early childhood education programs from school districts, individually or in cooperation with other school districts or educational service units, working in cooperation with existing nonpublic programs which meet the requirements of subsection (2) of section 79-1104. If there is an endowment agreement in effect, the board of trustees shall administer the Early Childhood Education Grant Program with respect to programs for children from birth to age three pursuant to section 79-1104.02 and the department shall continue to administer the Early Childhood Education Grant Program with respect to other prekindergarten programs pursuant to sections 79-1101 to 79-1104.05. All administrative procedures of the board of trustees, including, but not limited to, rules, grant applications, and funding mechanisms, shall harmonize with those established by the department for other prekindergarten programs.

(b) The first priority shall be for (i) continuation grants for programs that received grants in the prior school fiscal year and for which the state aid calculation pursuant to the Tax Equity and Educational Opportunities Support Act does not include early childhood education students, in an amount equal to the amount of such grant, except that if the grant was a first-year grant the amount shall be reduced by thirty-three percent, (ii) continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, in an amount equal to the amount of the grant for the school fiscal year prior to the first school fiscal year for which early

childhood education students were included in the state aid calculation for the school district's local system minus the calculated state aid amount, and (iii) for school fiscal year 2007-08, continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, but such state aid calculation does not result in the school district receiving any equalization aid, in an amount equal to the amount of the grant received in school fiscal year 2006-07. The calculated state aid amount shall be calculated by multiplying the basic funding per formula student for the school district by the formula students attributed to the early childhood education programs pursuant to the Tax Equity and Educational Opportunities Support Act.

(c) The second priority shall be for new grants and expansion grants for programs that will serve at-risk children who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half of the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half of the budget for expanding the capacity of the program to serve additional children.

(d) The third priority shall be for new grants, expansion grants, and continuation grants for programs serving children younger than those who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half the budget for expanding the capacity of the program to serve additional children. Continuation grants under this priority may be given annually in an amount up to one-half the total budget of the program per year minus any continuation grants received under the first priority.

(e) Programs serving children who will be eligible to attend kindergarten the following school year shall be accounted for separately for grant purposes from programs serving younger children, but the two types of programs may be combined within the same classroom to serve multi-age children. Programs that receive grants for school fiscal years prior to school fiscal year 2005-06 to serve both children who will be eligible to attend kindergarten the following school year and younger children shall account for the two types of programs separately for grant purposes beginning with school year 2005-06 and shall be deemed to have received grants prior to school fiscal year 2005-06 for each year that grants were received for the types of programs representing the age groups of the children served.

(2) Each program proposal which is approved by the department shall include (a) a planning period, (b) an agreement to participate in periodic evaluations of the program to be specified by the department, (c) evidence that the program will be coordinated or contracted with existing programs, including those listed in subdivision (d) of this subsection and nonpublic programs which meet the requirements of subsection (2) of section 79-1104, (d) a plan to coordinate and use a combination of local, state, and federal funding sources, including, but not limited to, programs for children with disabilities below five years of age funded through the Special Education Act, the Early Intervention Act, funds available through the flexible funding provisions under the Special Education Act, the federal Head Start program, 42 U.S.C. 9831 et seq., the federal Even Start Family Literacy Program, 20 U.S.C. 6361 et seq., Title I of the federal Improving America's Schools Act of 1994, 20 U.S.C. 6301 et seq., and child care assistance through the Department of Health and Human Services, (e) a plan to use sliding fee scales and the funding sources included in

subdivision (d) of this subsection to maximize the participation of economically and categorically diverse groups and to ensure that participating children and families have access to comprehensive services, (f) the establishment of an advisory body which includes families and community members, (g) the utilization of appropriately qualified staff, (h) an appropriate child-to-staff ratio, (i) appropriate group size, (j) compliance with minimum health and safety standards, (k) appropriate facility size and equipment, (l) a strong family development and support component recognizing the central role of parents in their children's development, (m) developmentally and culturally appropriate curriculum, practices, and assessment, (n) sensitivity to the economic and logistical needs and circumstances of families in the provision of services, (o) integration of children of diverse social and economic characteristics, (p) a sound evaluation component, including at least one objective measure of child performance and progress, (q) continuity with programs in kindergarten and elementary grades, (r) instructional hours that are similar to or less than the instructional hours for kindergarten except that a summer session may be offered, (s) well-defined language development and early literacy emphasis, including the involvement of parents in family literacy activities, (t) a plan for ongoing professional development of staff, and (u) inclusion of children with disabilities as defined in the Special Education Act, all as specified by rules and regulations of the department in accordance with sound early childhood educational practice.

(3) The department shall make an effort to fund programs widely distributed across the state in both rural and urban areas.

(4) The department, in collaboration with the board of trustees if an endowment agreement is in effect, shall provide a report evaluating the programs to the State Board of Education and the Legislature by January 1 of each odd-numbered year. The report submitted to the Legislature shall be submitted electronically. The Education Committee of the Legislature shall hold a public hearing regarding the report. Up to five percent of the total appropriation for the Early Childhood Education Grant Program for grants administered by the department may be reserved by the department for evaluation and technical assistance for the programs.

(5) Early childhood education programs, whether established pursuant to this section or section 79-1104, may be approved for purposes of the Tax Equity and Educational Opportunities Support Act, expansion grants, and continuation grants on the submission of a continuation plan demonstrating that the program will meet the requirements of subsection (2) of this section and a proposed operating budget demonstrating that the program will receive resources from other sources equal to or greater than the sum of any grant received pursuant to this section for the prior school year plus any calculated state aid as calculated pursuant to subsection (1) of this section for the prior school year.

(6) The State Board of Education may adopt and promulgate rules and regulations to implement the Early Childhood Education Grant Program, except that if there is an endowment agreement in effect, the board of trustees shall recommend any rules and regulations relating specifically to the Early Childhood Education Grant Program with respect to programs for children from birth to age three. It is the intent of the Legislature that the rules and regulations for programs for children from birth to age three be consistent to

the greatest extent possible with those established for other prekindergarten programs.

**Source:** Laws 1990, LB 567, § 3; Laws 1991, LB 511, § 70; Laws 1992, LB 245, § 75; Laws 1993, LB 348, § 70; R.S.1943, (1994), § 79-3703; Laws 1996, LB 900, § 785; Laws 1997, LB 346, § 8; Laws 2001, LB 759, § 2; Laws 2005, LB 577, § 5; Laws 2006, LB 1256, § 2; Laws 2007, LB603, § 7; Laws 2008, LB1153, § 3; Laws 2010, LB1071, § 26; Laws 2011, LB235, § 24; Laws 2012, LB782, § 160; Laws 2013, LB495, § 2.

**Cross References**

**Early Intervention Act**, see section 43-2501.

**Special Education Act**, see section 79-1110.

**Tax Equity and Educational Opportunities Support Act**, see section 79-1001.

**79-1104 Before-and-after-school or prekindergarten services; transportation services; school board; powers and duties.**

(1) Any school board in its discretion may (a) establish and financially support programs providing before-and-after-school or prekindergarten services, to which attendance shall be voluntary and which the board may deem beneficial to the education of prekindergarten or school-age children and (b) provide or financially support transportation for children to, from, or to and from programs as defined in section 71-1910. The board may charge a fee, not to exceed the actual cost, for providing such programs and services but may waive such fee on the basis of need. This section does not allow any school district to fail to meet its responsibilities under the Special Education Act.

(2) Prekindergarten programs established by school boards or educational service units shall be approved by the State Department of Education subject to regulations adopted and promulgated by the State Board of Education and may include such components as (a) the utilization of appropriately qualified staff, (b) an appropriate child-to-staff ratio, (c) appropriate group size, (d) compliance with minimum health and safety standards, (e) appropriate facility size and equipment, (f) a strong family development and support component, (g) developmentally and culturally appropriate curriculum, practices, and assessment, (h) well-defined language development and early literacy emphasis, and (i) a plan for ongoing professional development of staff, all in accordance with sound early childhood educational practice, research, and evaluation. All teachers and administrators in prekindergarten programs established pursuant to this section shall hold a valid certificate or permit issued pursuant to sections 79-806 to 79-815. The State Board of Education shall adopt and promulgate rules and regulations for the issuance of such permits or certificates required by this section.

**Source:** Laws 1996, LB 900, § 786; Laws 2001, LB 759, § 3; Laws 2003, LB 685, § 23; Laws 2006, LB 1256, § 3.

**Cross References**

**Special Education Act**, see section 79-1110.

**79-1104.01 Nebraska Early Childhood Education Endowment; endowment provider; requirements; endowment agreement; Early Childhood Education Endowment Fund; Early Childhood Education Endowment Cash Fund; created; investment.**

(1) Within ninety days after July 14, 2006, the State Department of Education shall request proposals from private endowments with experience in managing public and private funds for the benefit of children and families in multiple locations in Nebraska to be the endowment provider for the Nebraska Early Childhood Education Endowment upon the terms set forth in this section.

(2) An endowment seeking to become the endowment provider for the Nebraska Early Childhood Education Endowment shall agree to:

(a) Irrevocably commit, subject to subdivision (4)(a) of this section, no less than twenty million dollars in a private endowment to be used solely as part of the Nebraska Early Childhood Education Endowment within five years after the effective date of the endowment agreement, of which no less than five million dollars shall be pledged on the effective date of the endowment agreement. A minimum of one million dollars shall be placed in the private endowment prior to December 31, 2006, and a minimum of five million dollars shall be placed in the private endowment prior to June 30, 2007;

(b) Commit all earnings deposited from such private endowment for deposit into the Early Childhood Education Endowment Cash Fund;

(c) Permit the board of trustees to determine the allocation of funds from the Early Childhood Education Endowment Cash Fund pursuant to section 79-1104.02; and

(d) Submit to the State Department of Education an annual financial statement of the private endowment, audited by an independent auditor and complying with all applicable Internal Revenue Service requirements. The financial statement shall report details on the private endowment, including the current value of the corpus and the annual receipts to the private endowment categorized by donations and interests, together with a report listing the amount and purpose of expenditures from the private endowment.

(3) Upon selection of an endowment provider, the State Department of Education and such endowment provider shall enter into an endowment agreement pursuant to which the state and the endowment provider will agree to deposit funds as provided in subsection (4) of this section.

(4)(a) Upon the effective date of an endowment agreement, the state shall provide for the Early Childhood Education Endowment Fund, which is hereby created, in accordance with section 79-1104.05. 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.

(b) All interest, earnings, and proceeds from the Early Childhood Education Endowment Fund shall be deposited in the Early Childhood Education Endowment Cash Fund, which is hereby created. 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 interest, earnings, and proceeds from the Early Childhood Education Endowment Cash Fund shall be retained in such fund.

(c) Upon the effective date of an endowment agreement, the endowment provider shall deposit the amounts set forth in the endowment agreement into a private endowment for the sole benefit of the Early Childhood Education Endowment Fund. Money in the private endowment shall be managed by the

endowment provider in accordance with sound, professional, fiduciary practices and in accordance with the endowment agreement.

(d) Earnings deposited from the private endowment shall be deposited into the Early Childhood Education Endowment Cash Fund at least annually or as the endowment agreement provides.

**Source:** Laws 2006, LB 1256, § 4; Laws 2008, LB1153, § 4; Laws 2009, LB456, § 1.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**79-1104.02 Early Childhood Education Endowment Cash Fund; use; grants; program requirements.**

(1) The Early Childhood Education Endowment Cash Fund, consisting of the interest, earnings, and proceeds from the Early Childhood Education Endowment Fund and the earnings from the private endowment created by the endowment provider, funds transferred from the Education Innovation Fund pursuant to section 9-812, and any additional private donations made directly thereto, shall be used exclusively to provide funds for the Early Childhood Education Grant Program for at-risk children from birth to age three as set forth in this section.

(2) Grants provided by this section shall be to school districts and cooperatives of school districts for early childhood education programs for at-risk children from birth to age three, as determined by the board of trustees pursuant to criteria set forth by the board of trustees. School districts and cooperatives of school districts may establish agreements with other public and private entities to provide services or operate programs.

(3) Each program selected for a grant pursuant to this section may be provided a grant for up to one-half of the total budget of such program per year. Programs selected for grant awards may receive continuation grants subject to the availability of funding and the submission of a continuation plan which meets the requirements of the board of trustees.

(4) Programs shall be funded across the state and in urban and rural areas to the fullest extent possible.

(5) Each program selected for a grant pursuant to this section shall meet the requirements described in subsection (2) of section 79-1103, except that the periodic evaluations of the program are to be specified by the board of trustees and the programs need not include continuity with programs in kindergarten and elementary grades and need not include instructional hours that are similar to or less than the instructional hours for kindergarten. The programs may continue to serve at-risk children who turn three years of age during the program year until the end of the program year, as specified by the board of trustees.

(6) Up to ten percent of the total amount deposited in the Early Childhood Education Endowment Cash Fund each fiscal year may be reserved by the board of trustees for evaluation and technical assistance for the Early Child-

hood Education Grant Program with respect to programs for at-risk children from birth to age three.

**Source:** Laws 2006, LB 1256, § 5; Laws 2008, LB1153, § 5; Laws 2013, LB410, § 11; Laws 2013, LB495, § 3.

**79-1104.03 Early Childhood Education Endowment Board of Trustees; created; administrative support.**

To administer the Early Childhood Education Grant Program with respect to children from birth to age three, the Early Childhood Education Endowment Board of Trustees is created. For administrative support and budgetary purposes only, the board of trustees shall be within the State Department of Education.

**Source:** Laws 2006, LB 1256, § 6.

**79-1104.04 Board of trustees; members; terms; expenses.**

(1) The board of trustees shall include the following six members:

- (a) The Commissioner of Education or his or her designee;
- (b) The chief executive officer of the Department of Health and Human Services or his or her designee; and
- (c) The following persons appointed by the Governor, in his or her discretion:
  - (i) Two persons nominated by the endowment provider;
  - (ii) An early childhood professional representing an urban at-risk area appointed pursuant to subsection (5) of this section; and
  - (iii) An early childhood professional representing a rural at-risk county appointed pursuant to subsection (6) of this section.

(2) The terms of office for members initially appointed under subsection (1) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint the two members under subdivision (1)(c)(i) of this section for terms of one and two years, the member under subdivision (1)(c)(ii) of this section for a term of three years, and the member under subdivision (1)(c)(iii) of this section for a term of two years. Succeeding appointees 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 and qualified.

(3) The board of trustees shall by majority vote annually elect a chairperson from among the members of the board of trustees.

(4) The members of the board of trustees shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

(5) The Governor shall, in his or her discretion, appoint one member to the board of trustees who resides or works in an at-risk urban area consisting of not less than ten contiguous census tracts, as determined by the United States Bureau of the Census for the 2000 United States Census, within a city of the metropolitan class, which each contain a percentage of families below the poverty line of greater than twenty percent, as reported by the United States Bureau of the Census for the 2000 United States Census.

(6) The Governor shall, in his or her discretion, appoint one member to the board of trustees who resides or works in a county which does not contain a city of the metropolitan class or a city of the primary class and which contains a percentage of families below the poverty line of greater than eight and one-half percent, as reported by the United States Bureau of the Census for the 2000 United States Census.

**Source:** Laws 2006, LB 1256, § 7; Laws 2007, LB296, § 713; Laws 2008, LB1153, § 6.

**79-1104.05 Early Childhood Education Endowment Fund; funding.**

The Early Childhood Education Endowment Fund shall consist of any funds allocated to the Early Childhood Education Endowment Fund from funds belonging to the state for educational purposes described in Article VII, section 7, of the Constitution of Nebraska.

**Source:** Laws 2006, LB 1256, § 8; Laws 2009, LB456, § 2.

(b) GIFTED CHILDREN AND LEARNERS WITH HIGH ABILITY

**79-1105 State Department of Education; education for learners with high ability; consultant; employ.**

The State Department of Education has authority to employ a full-time consultant trained and experienced in the field of education for learners with high ability. Such consultant shall encourage, advise, and consult with each school of the state in the development and implementation of plans for education of learners with high ability and shall monitor the implementation of sections 79-1106 to 79-1108.03. For purposes of this section, learner with high ability has the definition found in section 79-1107.

**Source:** Laws 1967, c. 512, § 1, p. 1718; R.S.1943, (1994), § 79-339; Laws 1996, LB 900, § 787; Laws 1997, LB 347, § 33; Laws 1998, LB 1229, § 5.

**79-1106 Learners with high ability; purpose of sections.**

The purpose of sections 79-1106 to 79-1108.03 is to assist and encourage all school districts in the development, improvement, and implementation of accelerated or differentiated curriculum programs that will serve the educational needs of learners with high ability at levels appropriate for their abilities.

**Source:** Laws 1994, LB 647, § 1; R.S.1943, (1994), § 79-4001; Laws 1996, LB 900, § 788; Laws 1997, LB 347, § 34; Laws 1998, LB 1229, § 6.

**79-1107 Learners with high ability; terms, defined.**

For purposes of sections 79-1106 to 79-1108.03:

(1) Approved accelerated or differentiated curriculum programs means academic programs that serve the educational needs of learners with high ability developed and approved under section 79-1108;

(2) Department means the State Department of Education; and

(3) Learner with high ability means a student who gives evidence of high performance capability in such areas as intellectual, creative, or artistic capaci-

ty or in specific academic fields and who requires accelerated or differentiated curriculum programs in order to develop those capabilities fully.

**Source:** Laws 1994, LB 647, § 2; R.S.1943, (1994), § 79-4002; Laws 1996, LB 900, § 789; Laws 1997, LB 347, § 35; Laws 1998, LB 1229, § 7.

#### **79-1108 Learners with high ability; identification and programs.**

Each school district shall identify learners with high ability and may provide accelerated or differentiated curriculum programs that will address the educational needs of the identified students at levels appropriate for the abilities of those students. The accelerated or differentiated curriculum programs shall meet the standards of quality established by the department. Educational service units may identify learners with high ability and provide accelerated or differentiated curriculum programs for school districts.

**Source:** Laws 1994, LB 647, § 3; R.S.1943, (1994), § 79-4003; Laws 1996, LB 900, § 790; Laws 1998, LB 1229, § 8; Laws 2011, LB333, § 14.

#### **79-1108.01 Learners with high ability; school districts; duties.**

School districts shall annually provide the department with a copy of their criteria for identifying learners with high ability, the number of students identified according to the criteria, and the number of students participating in an approved accelerated or differentiated curriculum program. School districts shall also have a list of the students identified and how the students compare to the criteria available for inspection by department personnel.

**Source:** Laws 1998, LB 1229, § 9.

#### **79-1108.02 Learners with high ability; curriculum programs; funding.**

(1) The department shall distribute amounts from the Education Innovation Fund pursuant to section 9-812 for purposes of subsection (2) of this section to local systems as defined in section 79-1003 annually on or before October 15.

The funds distributed pursuant to this section shall be distributed based on a pro rata share of the eligible costs submitted in grant applications.

(2) Local systems may apply to the department for base funds and matching funds pursuant to this section to be spent on approved accelerated or differentiated curriculum programs. Each eligible local system shall receive one-tenth of one percent of the appropriation as base funds plus a pro rata share of the remainder of the appropriation based on identified students participating in an accelerated or differentiated curriculum program, up to ten percent of the prior year's fall membership as defined in section 79-1003, as matching funds. Eligible local systems shall:

(a) Provide an approved accelerated or differentiated curriculum program for students identified as learners with high ability;

(b) Provide funds from other sources for the approved accelerated or differentiated curriculum program greater than or equal to fifty percent of the matching funds received pursuant to this subsection;

(c) Provide an accounting of the funds received pursuant to this section, funds required by subdivision (b) of this subsection, and the total cost of the

program on or before August 1 of the year following the receipt of funds in a manner prescribed by the department, not to exceed one report per year;

(d) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program in a manner prescribed by the department, not to exceed one report per year; and

(e) Include identified students from Class I districts that are part of the local system in the accelerated or differentiated curriculum program.

If a local system will not be providing the necessary matching funds pursuant to subdivision (b) of this subsection, the local system shall request a reduction in the amount received pursuant to this subsection such that the local system will be in compliance with such subdivision. Local systems not complying with the requirements of this subsection shall not be eligible local systems in the following year.

**Source:** Laws 1998, LB 1229, § 10; Laws 2011, LB333, § 15.

### **79-1108.03 Learners with high ability; rules and regulations.**

The State Board of Education shall adopt and promulgate rules and regulations to implement sections 79-1105 to 79-1108.03, including criteria for the approval of accelerated or differentiated curriculum programs and data requirements for measuring academic progress of students participating in the accelerated or differentiated curriculum programs.

**Source:** Laws 1998, LB 1229, § 11.

### **79-1109 Repealed. Laws 1997, LB 347, § 59.**

## (c) SPECIAL EDUCATION

### SUBPART (i)—SPECIAL EDUCATION ACT

#### **79-1110 Act, how cited.**

Sections 79-1110 to 79-1167 shall be known and may be cited as the Special Education Act.

**Source:** Laws 1987, LB 367, § 1; Laws 1989, LB 487, § 14; Laws 1993, LB 520, § 22; Laws 1995, LB 742, § 4; R.S.Supp., 1995, § 79-3301; Laws 1996, LB 900, § 792; Laws 1997, LB 346, § 9; Laws 1997, LB 865, § 3; Laws 1998, Spec. Sess., LB 1, § 46; Laws 1999, LB 813, § 36; Laws 2000, LB 1135, § 23; Laws 2009, LB549, § 39; Laws 2010, LB1087, § 2.

#### **79-1111 Legislative intent.**

It is the intent of the Legislature that all children in the State of Nebraska, regardless of physical or mental capacity, are entitled to a meaningful educational program.

**Source:** Laws 1987, LB 367, § 2; R.S.1943, (1994), § 79-3302; Laws 1996, LB 900, § 793.

#### **79-1112 Repealed. Laws 1998, LB 904, § 3.**

#### **79-1113 Definitions, where found.**

For purposes of the Special Education Act, unless the context otherwise requires, the definitions found in sections 79-1114 to 79-1125.01 shall be used.

**Source:** Laws 1987, LB 367, § 3; Laws 1993, LB 520, § 23; R.S.1943, (1994), § 79-3303; Laws 1996, LB 900, § 795; Laws 1997, LB 865, § 4; Laws 1999, LB 813, § 37; Laws 2010, LB1087, § 3.

#### **79-1114 Adjusted average per pupil cost of the preceding year, defined.**

Adjusted average per pupil cost of the preceding year means the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual financial report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year, and the computation shall be subject to an audit by appropriate state agencies.

**Source:** Laws 1987, LB 367, § 4; Laws 1991, LB 511, § 67; Laws 1992, LB 245, § 72; R.S.1943, (1994), § 79-3304; Laws 1996, LB 900, § 796.

#### **79-1115 Allowable costs, defined.**

Allowable costs means:

(1) For school fiscal years prior to school fiscal year 1999-00, salaries, wages, benefits, and maintenance, supplies, travel, and other expenses essential to carry out the provisions for special education and support services; and

(2) For school fiscal year 1999-00 and each school fiscal year thereafter, salaries, wages, benefits, any medical expenditure by a school district for purposes of providing individualized education plan services for a special education student and health protection to the provider of the services, and maintenance, supplies, travel, and other expenses essential to carry out the provisions for special education and support services.

**Source:** Laws 1987, LB 367, § 5; R.S.1943, (1994), § 79-3305; Laws 1996, LB 900, § 797; Laws 1997, LB 865, § 5; Laws 2000, LB 1243, § 5.

#### **79-1115.01 Assistive technology device, defined.**

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf or modified or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

**Source:** Laws 1997, LB 865, § 6.

#### **79-1116 Average per pupil cost of the service agency, defined.**

Average per pupil cost of the service agency means the amount computed by dividing the total operating expenditure of the preceding year, excluding the cost of sectarian instruction, of the service agency by its preceding year's average daily membership.

**Source:** Laws 1987, LB 367, § 6; R.S.1943, (1994), § 79-3306; Laws 1996, LB 900, § 798; Laws 1997, LB 346, § 10.

**79-1117 Child with a disability, defined.**

Child with a disability means a child having a disability listed in section 79-1118.01 and verified pursuant to sections 79-1137 to 79-1139.

**Source:** Laws 1993, LB 520, § 24; R.S.1943, (1994), § 79-3306.01; Laws 1996, LB 900, § 799; Laws 1997, LB 346, § 11.

**79-1118 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.****79-1118.01 Disability, defined; diagnosis.**

Disability means an impairment which causes a child to be identified as having at least one of the conditions defined in this section and causes such child to need special education and related services. For purposes of this section:

(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance;

(2) Blind and visually impaired means partially seeing or blind, which visual impairment, even with correction, adversely affects a child's educational performance;

(3) Deaf means a hearing impairment which is so severe that processing linguistic information through hearing, with or without amplification, is impaired to the extent that educational performance is adversely affected;

(4) Deaf-blind means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that such impairments cannot be accommodated in special education programs solely for children who are deaf or blind;

(5) Developmental delay means either (a) a significant delay in function in one or more of the following areas: (i) Cognitive development; (ii) physical development; (iii) communication development; (iv) social or emotional development; or (v) adaptive behavior or skills development, or (b) a diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas;

(6)(a) Emotional disturbance means a condition in which a student exhibits one or more of the following characteristics over a long period of time and to a marked degree which adversely affects educational performance:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(b) Emotional disturbance includes schizophrenia but does not include social maladjustment unless a characteristic defined in subdivision (6)(a)(i) or (ii) of this section is also present;

(7) Hard of hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects educational performance but is not included under the term deaf in subdivision (3) of this section;

(8) Intellectual disability means a condition in which a child exhibits significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period which adversely affects educational performance;

(9) Multiple disabilities means concomitant impairments, such as intellectual disability-blind or intellectual disability-orthopedic impairment, the combination of which causes such severe educational problems that a child with such impairments cannot be accommodated in special education programs for one of the impairments. Multiple disabilities does not include deaf-blind;

(10) Orthopedic impairment means a severe orthopedic impairment which adversely affects a child's educational performance. Severe orthopedic impairments include impairments caused by (a) congenital anomaly, including, but not limited to, clubfoot or absence of a member, (b) disease, including, but not limited to, poliomyelitis or bone tuberculosis, or (c) other causes, including, but not limited to, cerebral palsy, amputations, and fractures and burns which cause contractures;

(11) Other health impaired means having limited strength, vitality, or alertness due to chronic or acute health problems, including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance;

(12) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Specific learning disability includes, but is not limited to, perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia;

(13) Speech-and-language-impaired means having a communication disorder such as stuttering, impaired articulation, language impairments, or voice impairment which adversely affects a child's educational performance; and

(14) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

The State Department of Education may group or subdivide the classifications of children with disabilities for the purpose of program description and

reporting. The department shall establish eligibility criteria and age ranges for the disability classification of developmental delay.

**Source:** Laws 1987, LB 367, § 9; Laws 1993, LB 348, § 62; R.S.1943, (1994), § 79-3309; Laws 1996, LB 900, § 802; R.S.1943, (1996), § 79-1120; Laws 1997, LB 346, § 12; Laws 1999, LB 813, § 38; Laws 2013, LB23, § 45; Laws 2013, LB410, § 12; Laws 2014, LB967, § 22.

Effective date April 3, 2014.

#### **79-1119 Excess cost, defined.**

For aid distributed in school fiscal years prior to 2015-16, excess cost means the difference between the total cost of the special education program excluding residential care and the number of students in the special education program multiplied by the adjusted average per pupil cost of the preceding year for the school district of residence of each child. For aid distributed in school fiscal year 2015-16 and each school fiscal year thereafter, excess cost means the difference between the total cost of the special education program excluding residential care minus federal medicaid funds received pursuant to section 43-2511 for services to school-age children excluding amounts designated as reimbursement for costs associated with the implementation and administration of the billing system pursuant to section 43-2511 and minus the product of the number of students in the special education program multiplied by the adjusted average per pupil cost of the preceding year for the school district of residence of each child.

**Source:** Laws 1987, LB 367, § 8; R.S.1943, (1994), § 79-3308; Laws 1996, LB 900, § 801; Laws 2014, LB276, § 6.

Effective date July 18, 2014.

#### **79-1119.01 Interim-program school, defined.**

Interim-program school means a school approved by the State Board of Education and located in or operated by (1) a county detention home established under section 43-2,110, (2) a juvenile emergency shelter, or (3) any institution which is a public or private facility, not owned or operated by a school district, which provides a residential program and regular educational or special education services with a special education rate approved by the State Department of Education.

**Source:** Laws 2010, LB1087, § 4.

#### **79-1120 Transferred to section 79-1118.01.**

#### **79-1121 Related services, defined.**

Related services means transportation services and such developmental, corrective, and other supportive services, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, as may be required to assist a child with a disability to benefit from special education and includes the early identification and assessment of disabilities in children. Medical services shall be for diagnostic and evaluation purposes only.

**Source:** Laws 1987, LB 367, § 10; R.S.1943, (1994), § 79-3310; Laws 1996, LB 900, § 803; Laws 1997, LB 346, § 13.

**79-1122 Residential care, defined.**

Residential care means food and lodging and any other related expenses which are not a part of the education program, but residential care does not include expenditures for medical or dental services. Expenditures for medical and dental services shall be the responsibility of the parent or legal guardian.

**Source:** Laws 1987, LB 367, § 13; R.S.1943, (1994), § 79-3312; Laws 1996, LB 900, § 804.

**79-1123 Repealed. Laws 2000, LB 1243, § 10.****79-1124 Service agency, defined.**

Service agency means the school district, educational service unit, local or regional office of intellectual disability, interim-program school, or some combination thereof or such other agency as may provide a special education program approved by the State Department of Education, including an institution not wholly owned or controlled by the state or any political subdivision to the extent that it provides educational or other services for the benefit of children from the age of five to the age of twenty-one years with disabilities if such services are nonsectarian in nature.

**Source:** Laws 1987, LB 367, § 14; R.S.1943, (1994), § 79-3313; Laws 1996, LB 900, § 806; Laws 1997, LB 346, § 14; Laws 2010, LB1087, § 5; Laws 2013, LB23, § 46.

**79-1125 Special education, defined.**

Special education means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. Special education includes speech-language pathology, occupational therapy, and physical therapy if the speech-language pathology or occupational or physical therapy consists of specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a child with a disability.

**Source:** Laws 1987, LB 367, § 11; R.S.1943, (1994), § 79-3314; Laws 1996, LB 900, § 807; Laws 1997, LB 346, § 15; Laws 2001, LB 797, § 43.

**79-1125.01 Support services, defined.**

Support services means preventive services for those children from birth to age twenty-one years and, if the child's twenty-first birthday occurs during the school year, until the end of that school year, not identified or verified as children with disabilities pursuant to sections 79-1118.01, 79-1138, and 79-1139 but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and to avoid the need for potentially expensive special education placement and services. Support services include the educational services provided to a child pursuant to subdivision (10)(c) of section 79-215 by an interim-program school or an approved or accredited school maintained by a residential setting if such child has not been identified or verified as a child with a disability pursuant to sections 79-1118.01 and 79-1138 but demonstrates a need for specially de-

signed assistance by residing in a residential setting described in subdivision (10)(a) of section 79-215.

**Source:** Laws 1995, LB 742, § 3; R.S.Supp.,1995, § 79-348; Laws 1996, LB 900, § 867; Laws 1997, LB 346, § 49; Laws 1998, Spec. Sess., LB 1, § 49; R.S.Supp.,1998, § 79-1185; Laws 1999, LB 813, § 51; Laws 2000, LB 1243, § 6; Laws 2010, LB1087, § 6.

**79-1126 Act; to whom applicable; Division of Vocational Rehabilitation; duties.**

The Special Education Act applies to a child with a disability from the date of diagnosis or the date of notification of the school district of residence to age twenty-one and, if the child's twenty-first birthday occurs during a school year, until the end of that school year. All provisions of state law related to special education which apply to a child with a disability who is age twenty shall apply to a child with a disability whose twenty-first birthday occurs during a school year until the end of that school year. The Division of Vocational Rehabilitation of the State Department of Education shall, in compliance with federal guidelines, assume responsibility for the training of those individuals whose education or training is terminated and for whom additional supportive services are required.

**Source:** Laws 1973, LB 403, § 6; Laws 1976, LB 761, § 8; Laws 1978, LB 889, § 1; R.S.1943, (1984), § 43-646; Laws 1987, LB 367, § 15; Laws 1990, LB 1090, § 40; R.S.1943, (1994), § 79-3315; Laws 1996, LB 900, § 808; Laws 1997, LB 346, § 16.

The age of twenty-one years is reached upon a person's twenty-first birthday, and, therefore, the term "to age twenty-one years" excludes any persons who have reached their twenty-first birthday. *Monahan v. School Dist. No. 1*, 229 Neb. 139, 425 N.W.2d 624 (1988).

**79-1127 Special education; board; duties.**

The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs in accordance with the Special Education Act and all applicable requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq., as such sections existed on January 1, 2009, and the regulations adopted thereunder.

**Source:** Laws 1973, LB 403, § 1; Laws 1986, LB 1093, § 2; R.S.Supp.,1986, § 43-641; Laws 1987, LB 367, § 20; R.S.1943, (1994), § 79-3320; Laws 1996, LB 900, § 809; Laws 1997, LB 346, § 17; Laws 2009, LB549, § 40.

**Cross References**

**Option students**, how treated, see section 79-235.

**79-1128 Special education programs; school district; provide; manner; use of funds; failure to offer acceptable program; effect.**

The special education programs required by section 79-1127 may be provided by any school district, by contracting with another school district or service agency, or by some combination of school districts, an educational service unit, combination of educational service units, the local or regional office of intellectual disability, any program approved by the State of Nebraska, or any combination thereof, except that only nonsectarian services shall be considered for

approval by the State of Nebraska. Any program receiving funds under the Special Education Act shall not use such funds to match state funds under the provisions of other programs. The members of the school board of any school district not offering continuous special education programs acceptable to the State Board of Education shall be in violation of the law. No state funds shall be paid to any school district as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of Nebraska to be paid to such district.

**Source:** Laws 1973, LB 403, § 2; Laws 1974, LB 863, § 5; Laws 1976, LB 761, § 5; Laws 1977, LB 443, § 1; R.S.1943, (1984), § 43-642; Laws 1987, LB 367, § 21; R.S.1943, (1994), § 79-3321; Laws 1996, LB 900, § 810; Laws 1997, LB 346, § 18; Laws 1999, LB 813, § 39; Laws 2013, LB23, § 47.

**79-1129 Children with disabilities; types of services to be furnished; transportation; reimbursement; special instruction.**

(1) The school board or board of education shall provide one of the following types of services to children with disabilities for whom the school district is the school district of residence:

(a) Provide for the transportation expenses for children with disabilities who are forced to leave the school district temporarily because of lack of educational services. A parent or guardian transporting such a child shall be paid for each day of attendance at the mileage rate provided in section 81-1176 for each actual mile or fraction thereof traveled between the place of residence and the program of attendance, and when any parent or guardian transports more than one child with a disability in his or her custody or control enrolled in programs at the same location, the amount of payments to such parent or guardian shall be based upon the transportation of one such child. No transportation payments shall be made to a parent or guardian for mileage not actually traveled by such parent or guardian;

(b) Provide for the transportation expenses within the school district of any child with a disability who is enrolled in a special educational program of the district when either (i) the child is required to attend a facility other than what would be the normal school or attendance facility of the child to receive appropriate special educational services or (ii) the nature of the child's disability is such that special transportation is required. A parent or guardian transporting such child shall be paid for each day of attendance at the mileage rate provided in section 81-1176 for each actual mile or fraction thereof traveled between the place of residence and the program of attendance, and when any parent or guardian transports more than one child with a disability in his or her custody or control enrolled in programs at the same location, the amount of payments to such parent or guardian shall be based upon the transportation of one such child. No transportation payments shall be made to a parent or guardian for mileage not actually traveled by such parent or guardian;

(c) Provide visiting teachers for homebound children with disabilities. Such teachers shall be certified and qualified in the same manner as required for other teachers in Nebraska;

(d) Provide correspondence instruction approved by the Commissioner of Education; or

(e) Provide any other method of instruction approved by the Commissioner of Education.

(2) When a child with a disability resides in or attends a preschool or child care program in a school district other than the school district of residence of his or her parents or guardian, the nonresident school district may, upon mutual agreement with the school district of residence, provide for the transportation expenses of the child.

**Source:** Laws 1941, c. 82, § 4, p. 328; C.S.Supp.,1941, § 79-3004; R.S. 1943, § 43-607; Laws 1949, c. 131, § 4, p. 343; Laws 1967, c. 254, § 1, p. 674; Laws 1967, c. 526, § 2, p. 1747; Laws 1969, c. 345, § 1, p. 1211; Laws 1972, LB 690, § 4; Laws 1974, LB 92, § 1; Laws 1976, LB 761, § 2; Laws 1980, LB 867, § 1; Laws 1981, LB 204, § 65; Laws 1982, LB 942, § 4; R.S.1943, (1984), § 43-607; Laws 1987, LB 367, § 22; Laws 1990, LB 1090, § 41; Laws 1991, LB 700, § 1; Laws 1995, LB 401, § 43; R.S.Supp.,1995, § 79-3322; Laws 1996, LB 900, § 811; Laws 1997, LB 346, § 19.

#### Cross References

**Option enrollment program**, resident school district provide transportation services, see section 79-241.

Types of education to be furnished to handicapped children are prescribed by this section. *Schutte v. Decker*, 164 Neb. 582, 83 N.W.2d 69 (1957).

### **79-1130 Transportation services; legislative intent; State Department of Education; duties; cooperative arrangement.**

(1) It is the intent of the Legislature that transportation services for children with disabilities prescribed in section 79-1129 shall be provided in the most cost-efficient manner consistent with the goal of providing free appropriate special education to all such children. The Legislature finds that educational service units and special education cooperatives created by school districts and recognized by the State Department of Education are in a unique position to improve the coordination and efficiency of transportation services in all areas of the state. It is the intent of the Legislature to authorize and encourage school districts, educational service units, and special education cooperatives to jointly plan, coordinate, and, where feasible, provide transportation services for children with disabilities. The State Department of Education shall review and approve, approve with modifications, or disapprove all transportation applications to ensure the implementation of the most cost-efficient transportation system, consistent with the goal of providing free appropriate special education to all children.

(2) School districts, educational service units, and special education cooperatives created by school districts and recognized by the State Department of Education are authorized to jointly plan, coordinate, and, where feasible, provide special education transportation services prescribed in section 79-1129. Any educational service unit or special education cooperative may enter into a cooperative arrangement with a school board or board of education of a school district for the provision of such transportation services. Such arrangement shall be approved by the State Department of Education, and upon approval of the arrangement the educational service unit or special education cooperative

providing the transportation services shall be eligible to receive direct reimbursement for such services pursuant to section 79-1144.

**Source:** Laws 1986, LB 942, § 4; R.S.Supp.,1986, § 43-607.02; Laws 1987, LB 367, § 23; R.S.1943, (1994), § 79-3323; Laws 1996, LB 900, § 812; Laws 1997, LB 346, § 20.

**79-1131 Education programs; children with disabilities who are less than five years of age; voluntary.**

Participation in or attendance at programs by children with disabilities who are less than five years of age shall be voluntary as specified by the parent or guardian. Programs serving children with disabilities who are less than three years of age shall, to the greatest extent possible, be based upon providing parent training in the home environment.

**Source:** Laws 1976, LB 761, § 10; Laws 1978, LB 889, § 2; R.S.1943, (1984), § 43-646.01; Laws 1987, LB 367, § 24; R.S.1943, (1994), § 79-3324; Laws 1996, LB 900, § 813; Laws 1997, LB 346, § 21.

**79-1132 Special education programs; children less than five years of age; State Department of Education provide grants; to whom; procedure.**

The State Department of Education shall provide grants for the costs of the special education programs approved by the State Department of Education to the school district of residence for children with disabilities who are less than five years of age. Educational service units or cooperatives of school districts recognized as regional planning entities by the State Board of Education pursuant to section 79-1135 shall be eligible to receive grants for cooperative programs for such children with disabilities who are less than five years of age if such educational service units or cooperatives have complied with the reporting and approval requirements of such section. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. For special education programs and transportation provided to children with disabilities who are less than five years of age in fiscal year 1995-96 and each fiscal year thereafter, if federal funding pursuant to the federal Individuals with Disabilities Education Act, as such act existed on May 8, 2001, Part B and section 619 base year allocation flow-through funds is inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based on such allowable costs for all special education programs and transportation to children with disabilities who are less than five years of age. The grant payments based upon claims submitted shall be made by the State Department of Education to the school district of residence, educational service unit, or regional planning entity recognized by the State Board of Education pursuant to section 79-1135 each year.

**Source:** Laws 1978, LB 889, § 3; Laws 1980, LB 765, § 1; Laws 1986, LB 942, § 8; R.S.Supp.,1986, § 43-646.02; Laws 1987, LB 367, § 25; Laws 1995, LB 742, § 5; R.S.Supp.,1995, § 79-3325; Laws 1996, LB 900, § 814; Laws 1997, LB 346, § 22; Laws 1998, Spec. Sess., LB 1, § 47; Laws 2001, LB 797, § 44.

**79-1133 Special education programs; student less than five years of age; school district; amount paid to service agency; determination.**

Each school district shall pay an amount equal to the average per pupil cost of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child with a disability who is less than five years of age, who is a resident of the district, and who is attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Health and Human Services, and any other service agency whose programs are approved by the State Department of Education.

**Source:** Laws 1978, LB 889, § 4; R.S.1943, (1984), § 43-646.03; Laws 1987, LB 367, § 26; R.S.1943, (1994), § 79-3326; Laws 1996, LB 900, § 815; Laws 1996, LB 1044, § 821; Laws 1997, LB 346, § 23.

**79-1134 Repealed. Laws 1999, LB 813, § 62.****79-1135 Children with disabilities who are less than five years of age; regional plan of services; school district; participation; supplementary amendments.**

Each school district shall demonstrate participation in a plan of services for children with disabilities who are less than five years of age. Such plans shall be prepared on a regional basis as determined by the State Department of Education and updated annually.

The content of plans shall be prescribed by the department.

Supplementary amendments to any program plans may be submitted on dates specified by the department during the same school year and shall be subject to the same review as the initial plans.

**Source:** Laws 1978, LB 889, § 9; Laws 1986, LB 942, § 9; R.S.Supp.,1986, § 43-646.08; Laws 1987, LB 367, § 28; R.S. 1943, (1994), § 79-3328; Laws 1996, LB 900, § 817; Laws 1997, LB 346, § 25; Laws 1999, LB 813, § 40; Laws 2003, LB 67, § 24.

**79-1136 Sections, how construed.**

Sections 79-1126 and 79-1131 to 79-1136 do not prevent funding from sources other than the public schools for the program for children with disabilities who are less than five years of age.

**Source:** Laws 1978, LB 889, § 10; R.S.1943, (1984), § 43-646.09; Laws 1987, LB 367, § 29; R.S.1943, (1994), § 79-3329; Laws 1996, LB 900, § 818; Laws 1997, LB 346, § 26.

**79-1137 Legislative findings and intent.**

The Legislature finds and declares that there is a need to establish a process and criteria to assess, identify, and verify children who may require special education. Research-based criteria and a rational process for the assessment of children who may require special education will lead to greater equity, consistency, and efficiency in the identification of and the provision of services to such children. It is the intent of the Legislature that all children who require

special education services shall be identified and verified pursuant to such criteria and process.

**Source:** Laws 1986, LB 942, § 1; R.S.Supp.,1986, § 43-605; Laws 1987, LB 367, § 16; R.S.1943, (1994), § 79-3316; Laws 1996, LB 900, § 819; Laws 1997, LB 346, § 27.

**79-1138 Disabilities; assessment, identification, and verification of need for services; State Board of Education; duties.**

(1) The State Board of Education shall adopt and promulgate rules and regulations establishing criteria for the assessment, identification, and verification of all disabilities defined in section 79-1118.01 to the extent that such disabilities are consistent with federal law and regulation.

(2) The State Board of Education shall develop guidelines to assist school districts, educational service units, and approved cooperatives with the assessment, identification, and verification of the need for related services defined in section 79-1121.

**Source:** Laws 1986, LB 942, § 2; R.S.Supp.,1986, § 43-605.01; Laws 1987, LB 367, § 17; R.S.1943, (1994), § 79-3317; Laws 1996, LB 900, § 820; Laws 1997, LB 346, § 28; Laws 1997, LB 865, § 7; Laws 1999, LB 813, § 41.

**79-1139 Special education programs and services; children eligible.**

Each school district shall include only students identified and verified pursuant to sections 79-1137 and 79-1138 in special education programs and shall not provide special education services pursuant to the Special Education Act to any child who has not been so identified and verified, except that the verification requirements established by rules and regulations adopted and promulgated by the State Board of Education shall not apply to students who have been included in special education programs pursuant to the special education statutes and rules and regulations adopted and promulgated pursuant thereto in effect immediately prior to July 17, 1986, until such time as such children are required to be reverified for special education.

**Source:** Laws 1986, LB 942, § 3; R.S.Supp.,1986, § 43-605.02; Laws 1987, LB 367, § 18; R.S.1943, (1994), § 79-3318; Laws 1996, LB 900, § 821.

**79-1140 School district; amount paid to service agency; determination.**

Except as provided in sections 79-232 to 79-246, each school district shall pay an amount equal to the average per pupil cost of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child with a disability who is a resident of the district and is attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Health and Human Services, and any other service agency whose programs are approved by the State Department of Education.

**Source:** Laws 1973, LB 403, § 7; Laws 1974, LB 863, § 6; Laws 1977, LB 443, § 3; Laws 1978, LB 871, § 12; R.S.1943, (1984), § 43-647; Laws 1987, LB 367, § 30; Laws 1989, LB 183, § 22; R.S.1943,

(1994), § 79-3330; Laws 1996, LB 900, § 822; Laws 1996, LB 1044, § 822; Laws 1997, LB 346, § 29; Laws 1997, LB 347, § 36; Laws 1999, LB 813, § 42.

**Cross References**

**Option enrollment program**, exemption from payment responsibility for resident school district, see section 79-246.

**79-1141 Repealed. Laws 1999, LB 813, § 62.**

**79-1142 State Department of Education; reimbursement for special education programs and support services; to whom; manner; limitations.**

(1) Level I services refers to services provided to children with disabilities who require an aggregate of not more than three hours per week of special education services and support services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services.

(2) The total allowable reimbursable cost for support services shall not exceed a percentage, established by the State Board of Education, of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. The percentage established by the State Board of Education for support services shall not exceed the difference of ten percent minus the percentage of the appropriations for special education approved by the Legislature set aside for reimbursements for support services pursuant to subsection (5) of this section.

(3) For special education and support services provided in each school fiscal year, the State Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the department. The reimbursement percentage shall be the ratio of the difference of the appropriations for special education approved by the Legislature minus the amounts set aside pursuant to subsection (5) of this section divided by the total allowable excess costs for all special education programs and support services.

(4) Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this section if such cooperatives or educational service units have complied with the reporting and approval requirements of section 79-1155 for cooperative programs which were offered the preceding year. The payments shall be made by the department to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The director shall, upon receiving such certification, draw warrants against funds appropriated.

(5) On and after August 1, 2010, residential settings described in subdivision (10)(c) of section 79-215 shall be reimbursed for the educational services, including special education services and support services, provided pursuant to such subdivision on or after August 1, 2010, in an amount determined pursuant to the average per pupil cost of the service agency. Reimbursements pursuant to this section shall be made from funds set aside for such purpose within sixty days after receipt of a reimbursement request submitted in the manner required by the department and including any documentation required by the department for educational services that have been provided, except that if there are

not any funds available for the remainder of the state fiscal year for such reimbursements, the reimbursement shall occur within thirty days after the beginning of the immediately following state fiscal year. The department may audit any required documentation and subtract any payments made in error from future reimbursements. The State Board of Education shall set aside separate amounts from the appropriations for special education approved by the Legislature for reimbursements pursuant to this subsection for students receiving special education services and for students receiving support services for each state fiscal year. The amounts set aside for each purpose shall be based on estimates of the reimbursements to be requested during the state fiscal year and shall not be less than the total amount of reimbursements requested in the prior state fiscal year plus any unpaid requests from the prior state fiscal year.

**Source:** Laws 1973, LB 403, § 8; Laws 1975, LB 555, § 4; Laws 1975, Spec. Sess., LB 3, § 1; Laws 1976, LB 903, § 1; Laws 1986, LB 929, § 1; Laws 1986, LB 942, § 10; Laws 1986, Fourth Spec. Sess., LB 2, § 2; R.S.Supp., 1986, § 43-648; Laws 1987, LB 367, § 32; Laws 1987, LB 413, § 1; Laws 1995, LB 742, § 6; R.S.Supp., 1995, § 79-3332; Laws 1996, LB 900, § 824; Laws 1997, LB 346, § 30; Laws 1997, LB 865, § 8; Laws 1998, Spec. Sess., LB 1, § 48; Laws 1999, LB 813, § 43; Laws 2000, LB 1243, § 7; Laws 2001, LB 797, § 45; Laws 2010, LB1087, § 7.

**Cross References**

Option enrollment program, determination of reimbursement, see section 79-246.

**79-1143 Fiscal year for purposes of act.**

The fiscal year for all programs reimbursed pursuant to the Special Education Act shall begin on September 1 of each year and end on August 31 of the following year. Funds appropriated for any period ending on June 30 of a given year for actual transportation expenses for children with disabilities pursuant to section 79-1129 may be spent or obligated through August 31 of that year for such purpose.

**Source:** Laws 1989, LB 487, § 15; R.S.1943, (1994), § 79-3332.01; Laws 1996, LB 900, § 825; Laws 1997, LB 346, § 31.

**Cross References**

School fiscal year, see section 79-1091.

**79-1144 Children with disabilities; education; funds; channeled through office of State Department of Education; expenditures authorized.**

Funds shall be appropriated by the Legislature to carry out sections 79-1142 to 79-1144 and 79-1147. Such funds shall be channeled through the State Department of Education. The department is authorized to expend such funds upon proper vouchers approved by the department and warrants issued by the Director of Administrative Services for financial reimbursement to school districts, educational service units, special education cooperatives created by school districts, agencies, and parents or guardians, including (1) reimbursement pursuant to section 79-1129 for actual transportation expenses per year for children with disabilities a pro rata amount which shall be determined by the State Board of Education from appropriations for special education approved by the Legislature based on all actual allowable transportation costs, (2) reimbursement for instructional aids and consultative, supervisory, research,

and testing services to school districts, and (3) reimbursement for salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education programs. Minor building modifications shall not be eligible for state reimbursement as an allowable expense. Applications for state reimbursement for actual transportation expenses shall be submitted to the department annually on a date and on forms prescribed by the department. Amendments to applications for actual transportation expenses shall be submitted on dates prescribed by the department during the school year in which the original application was made.

**Source:** Laws 1949, c. 131, § 8, p. 345; Laws 1963, c. 256, § 1, p. 777; Laws 1967, c. 526, § 4, p. 1749; Laws 1971, LB 178, § 1; Laws 1971, LB 977, § 2; Laws 1972, LB 690, § 5; Laws 1973, LB 102, § 2; Laws 1974, LB 92, § 2; Laws 1986, LB 1093, § 1; Laws 1986, LB 942, § 6; Laws 1986, LB 1177, § 20; R.S.Supp., 1986, § 43-611; Laws 1987, LB 367, § 33; Laws 1992, Third Spec. Sess., LB 15, § 1; Laws 1993, LB 597, § 1; Laws 1994, LB 858, § 12; Laws 1995, LB 742, § 7; R.S.Supp., 1995, § 79-3333; Laws 1996, LB 900, § 826; Laws 1997, LB 346, § 32; Laws 1999, LB 813, § 44.

#### **79-1145 Appropriation of General Funds; limitation.**

(1) For each fiscal year prior to fiscal year 2014-15, the aggregate amount of General Funds appropriated for special education programs and support services pursuant to sections 79-1129, 79-1132, and 79-1144 shall not exceed the aggregate amount of General Funds appropriated pursuant to such sections for the previous fiscal year, increased by five percent.

(2) For fiscal year 2014-15 and each fiscal year thereafter, the aggregate amount of General Funds appropriated for special education programs and support services pursuant to sections 79-1129, 79-1132, and 79-1144 shall not exceed the aggregate amount of General Funds appropriated pursuant to such sections for the previous fiscal year, increased by ten percent. For purposes of this section, for fiscal year 2016-17 the aggregate amount of General Funds appropriated for special education programs and support services pursuant to sections 79-1129, 79-1132, and 79-1144 for the previous fiscal year shall be the net amount after any decrease required pursuant to section 43-2515.

**Source:** Laws 1995, LB 742, § 8; R.S.Supp., 1995, § 79-3333.01; Laws 1996, LB 900, § 827; Laws 1999, LB 813, § 45; Laws 2000, LB 1243, § 8; Laws 2014, LB276, § 7; Laws 2014, LB974, § 3.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB276, section 7, with LB974, section 3, to reflect all amendments.

**Note:** Changes made by LB974 became effective April 3, 2014. Changes made by LB276 became effective July 18, 2014.

#### **79-1146 Handicapped children; school district; educational service unit; contract for services.**

The school district or educational service unit which received such funds as provided in section 79-1144 may contract with another school district, educational service unit, state school, or public agency.

**Source:** Laws 1971, LB 178, § 2; R.S.1943, (1984), § 43-611.01; Laws 1987, LB 367, § 35; R.S.1943, (1994), § 79-3334; Laws 1996, LB 900, § 828.

**79-1147 Temporary residential care; payment by state; when.**

Whenever a child with a disability must temporarily reside in a residential facility, boarding home, or foster home in order to receive an appropriate special education program, the State of Nebraska shall provide for the ordinary and reasonable cost of the residential care during the duration of the special education program. The state shall not be required to pay such cost unless placement of the child in a special education program requiring residential care was made by the school district of residence with the prior approval of the State Department of Education or was made pursuant to sections 79-1162 to 79-1167.

**Source:** Laws 1987, LB 367, § 34; R.S.1943, (1994), § 79-3335; Laws 1996, LB 900, § 829; Laws 1997, LB 346, § 33.

**79-1148 Children with disabilities; regional networks, schools, or centers; authorized.**

The State Department of Education is authorized to set up one or more statewide regional networks, approved schools, or centers for children with disabilities. Any such regional network, school, or center may offer residential facilities or services for such children, and such services shall be under the control and supervision of the State Department of Education.

**Source:** Laws 1957, c. 388, § 1, p. 1347; R.R.S.1943, § 83-246; Laws 1961, c. 209, § 1, p. 624; Laws 1972, LB 690, § 9; Laws 1978, LB 871, § 28; R.S.1943, (1984), § 43-617; Laws 1987, LB 367, § 37; R.S.1943, (1994), § 79-3337; Laws 1996, LB 900, § 830; Laws 1997, LB 346, § 34; Laws 1999, LB 813, § 46; Laws 2009, LB549, § 41.

**79-1149 Regional network, school, or center; admission; rules and regulations.**

The admission to any regional network, school, or center, as provided by section 79-1148, shall be by rules and regulations to be adopted, promulgated, and administered by the State Department of Education.

**Source:** Laws 1957, c. 388, § 2, p. 1347; R.R.S.1943, § 83-247; Laws 1961, c. 209, § 2, p. 624; R.S.1943, (1984), § 43-618; Laws 1987, LB 367, § 38; R.S.1943, (1994), § 79-3338; Laws 1996, LB 900, § 831; Laws 2009, LB549, § 42.

**79-1150 Regional network, school, or center; remittance of money.**

All money derived from any source other than General Fund appropriations by any regional network, school, or center as provided in sections 79-1148 and 79-1149 shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund, and such money shall be made available to any such regional network, school, or center for purposes of education, training, or maintenance of students.

**Source:** Laws 1965, c. 382, § 2, p. 1234; Laws 1972, LB 1000, § 3; Laws 1978, LB 871, § 29; R.S.1943, (1984), § 43-619; Laws 1987, LB 367, § 39; R.S.1943, (1994), § 79-3339; Laws 1996, LB 900, § 832; Laws 2009, LB549, § 43.

**79-1151 Residential schools; emergency cash fund; established; use.**

An emergency cash fund shall be established on behalf of any school as provided for by sections 79-1148 and 79-1149. The fund shall not exceed five hundred dollars. Such emergency cash fund shall be used to provide for immediate and unusual needs as may be required and shall be reimbursed from the General Fund appropriation of each such school.

**Source:** Laws 1996, LB 900, § 833.

**79-1152 Residential care; placement; requirements; appeal; cost; maximum rate; established.**

No school district shall place a child with a disability in a special education program requiring residential care without advance consultation with the State Department of Education to review the child's needs and the availability and appropriateness of each possible placement in the continuum of alternative services. Applications for approval of special education program placements requiring residential care shall be signed by the parent or legal guardian, submitted via the school district of residence of the child to the State Department of Education, and acted upon by the State Department of Education within thirty days after receipt by the department. If an application is denied, the parent or legal guardian shall be provided written notification by the State Department of Education of his or her right to appeal the decision pursuant to sections 79-1162 to 79-1167 and right to name the State Department of Education as respondent in the appeal proceeding.

The State Department of Education and the Department of Health and Human Services shall annually establish the maximum rates that the state will pay for the ordinary and reasonable cost of residential care placements within the state. After September 6, 1985, children with disabilities whose residential placement was funded by state and regional agencies other than the State Department of Education shall continue to be funded by such agencies.

**Source:** Laws 1967, c. 243, § 1, p. 646; Laws 1972, LB 690, § 13; Laws 1973, LB 403, § 16; Laws 1978, LB 871, § 1; Laws 1982, LB 942, § 5; Laws 1985, LB 518, § 1; R.S.Supp., 1986, § 43-626; Laws 1987, LB 367, § 41; R.S. 1943, (1994), § 79-3341; Laws 1996, LB 900, § 834; Laws 1996, LB 1044, § 823; Laws 1997, LB 346, § 35.

The Education of the Handicapped Act, 20 U.S.C. §§ 1400 et seq. (1988), does not authorize residential care merely to enhance an otherwise sufficient day program. *Williams v. Gering Pub. Schools*, 236 Neb. 722, 463 N.W.2d 799 (1990).

**79-1153 Residential placement; subsequent duties.**

Following residential placement of a child with a disability, the school district of residence and the State Department of Education shall continue efforts to develop appropriate programs closer to the child's home and shall cooperate with the Department of Health and Human Services in preparing families to accommodate returning children with disabilities. The Department of Health and Human Services shall provide consultative services, as defined by mutual agreement between the State Department of Education and the Department of

Health and Human Services, to the children with disabilities who were initially provided residential care and to their families.

**Source:** Laws 1985, LB 518, § 3; R.S.Supp.,1986, § 43-626.01; Laws 1987, LB 367, § 42; R.S.1943, (1994), § 79-3342; Laws 1996, LB 900, § 835; Laws 1996, LB 1044, § 824; Laws 1997, LB 346, § 36.

**79-1154 State Board of Education; review special training and educational programs.**

The State Board of Education shall review special training and educational programs offered by or in conjunction with any public school district, combination of public school districts, educational service unit, or combination of educational service units subject to the following:

- (1) Each teacher in any such special program shall be qualified;
- (2) Teacher aides working with any such program shall have such qualifications as the governing body of the school district, educational service unit, or combination shall prescribe and shall participate in appropriate inservice activities; and
- (3) Each qualified teacher shall be responsible for the direct supervision of teacher aides, whose duties shall be limited to those prescribed in section 79-802.

For purposes of this section, qualified teacher means an individual holding a valid State of Nebraska teaching or special services certificate with an endorsement appropriate to the disabilities served. If such teacher is serving children with more than one disability, qualified teacher means an individual holding a valid State of Nebraska teaching or special services certificate with an endorsement in at least one of the disabilities served.

**Source:** Laws 1967, c. 246, § 1, p. 650; Laws 1972, LB 690, § 12; Laws 1973, LB 403, § 15; Laws 1974, LB 863, § 4; Laws 1976, LB 761, § 4; R.S.1943, (1984), § 43-625; Laws 1987, LB 367, § 40; R.S. 1943, (1994), § 79-3340; Laws 1996, LB 900, § 836; Laws 1997, LB 346, § 37.

**Cross References**

Special education course work, requirements for entry-level certificate, see section 79-809.

**79-1155 Special education programs; reports; special education program application; review and approval.**

All school districts shall, on a date prescribed by the State Department of Education, file with the department application information for special education programs and support services. Cooperatives of school districts or educational service units applying for grants or reimbursement for programs pursuant to section 79-1132, 79-1142, or 79-1144 shall also file application information pursuant to this section. The application forms shall conform to reporting requirements provided in section 79-1156. The department shall review and take action to approve, approve with modifications, or disapprove the application for special education programs of the school district, cooperative of school districts, or educational service unit. Supplementary amendments to any program application previously approved by the department may be submitted on dates specified by the department during the same school year

and shall be subject to the same review and approval as the initial application. The department shall approve, approve with modifications, or disapprove all supplementary amendments to the program application. All final financial reports on special education and support services costs shall be reported to the department by October 31 of each year for the preceding school year on forms prescribed by the department. Any program that provides residential care shall show the costs of such care separately from the costs of the education program.

**Source:** Laws 1973, LB 403, § 3; Laws 1976, LB 761, § 6; Laws 1986, LB 942, § 7; R.S.Supp.,1986, § 43-643; Laws 1987, LB 367, § 43; R.S.1943, (1994), § 79-3343; Laws 1996, LB 900, § 837; Laws 1997, LB 346, § 38; Laws 1997, LB 710, § 25; Laws 1997, LB 865, § 9; Laws 1999, LB 813, § 47; Laws 2001, LB 797, § 46; Laws 2003, LB 67, § 25.

**79-1156 Special education and support services programs; coordination; application required.**

The State Department of Education shall coordinate information reporting requirements for special education and support services programs with other educational data reporting requirements of the department to the extent possible. The application for programs shall contain the information required by the department.

**Source:** Laws 1973, LB 403, § 9; Laws 1985, LB 518, § 4; Laws 1986, LB 942, § 11; R.S.Supp.,1986, § 43-649; Laws 1987, LB 367, § 44; R.S.1943, (1994), § 79-3344; Laws 1996, LB 900, § 838; Laws 1997, LB 346, § 39; Laws 1997, LB 865, § 10; Laws 1999, LB 813, § 48; Laws 2003, LB 67, § 26.

**79-1157 Special education programs; review; evaluation.**

All special education programs shall be reviewed by the State Department of Education.

To enable the State Department of Education to determine the effectiveness of the programs and services being provided, the department shall conduct a program of continuing evaluations of the different types of programs and services being provided for each of the service groups. In conducting these evaluations, the department shall take into account such factors as numbers and types of children with disabilities, class sizes, qualifications of staff, and other factors which the department deems appropriate. The department shall conduct evaluations of all programs and services and shall conduct these evaluations in such a manner as to enable the department to compare the relative effectiveness of the same or similar programs or services provided in different locations.

Evaluation studies shall be designed to provide the Legislature, the State Department of Education, the school districts, and other service agencies with the following information:

- (1) A detailed description of groups served;
- (2) A detailed description of the kind of programs or services provided and their cost per unit of service as well as the cost of each service; and

(3) A detailed description of the effectiveness of the programs or services.

**Source:** Laws 1973, LB 403, § 12; R.S.1943, (1984), § 43-650; Laws 1987, LB 367, § 45; Laws 1990, LB 1090, § 42; R.S.1943, (1994), § 79-3345; Laws 1996, LB 900, § 839; Laws 1997, LB 346, § 40; Laws 1999, LB 813, § 49.

**79-1158 Special education and support services programs; reimbursement; when.**

No reimbursement for special education and support services programs shall be allowed unless the program meets the standards established by the State Department of Education.

**Source:** Laws 1973, LB 403, § 13; Laws 1976, LB 761, § 9; R.S.1943, (1984), § 43-651; Laws 1987, LB 367, § 46; R.S.1943, (1994), § 79-3346; Laws 1996, LB 900, § 840; Laws 1997, LB 865, § 11.

**Cross References**

Waiver of rules and regulations, see section 79-1188.

**79-1159 State Department of Education; school district; technical assistance; advisory capacity.**

The State Department of Education, upon the request of any school district, shall provide technical assistance in the promulgation of any plan, program, or report required by the Special Education Act. Such assistance shall be given only in an advisory capacity and shall not be designed or construed to transfer, either in whole or in part, the responsibility for or actual development or implementation of such plan, program, or report.

**Source:** Laws 1973, LB 403, § 22; R.S.1943, (1984), § 43-653; Laws 1987, LB 367, § 47; R.S.1943, (1994), § 79-3347; Laws 1996, LB 900, § 841.

**79-1159.01 State Department of Education; assistive technology devices registry.**

The State Department of Education shall establish a registry for assistive technology devices to encourage and facilitate cooperation and shared usage of assistive technology devices. Participation by school districts, educational service units, and approved cooperatives shall be voluntary.

**Source:** Laws 1997, LB 865, § 13.

**79-1160 State Department of Education; adopt rules and regulations.**

The State Department of Education shall adopt, promulgate, and publish rules and regulations necessary to carry out the Special Education Act. Such rules and regulations shall include, but not be limited to, the regulation of costs under section 79-1152, limitation of the program to children with disabilities who require residential care in order to receive an appropriate special education program, and provisions for contracts with the Department of Health and Human Services to assist in the administration of the act.

**Source:** Laws 1973, LB 403, § 29; R.S.1943, (1984), § 43-660; Laws 1987, LB 367, § 48; R.S.1943, (1994), § 79-3348; Laws 1996, LB 900, § 842; Laws 1996, LB 1044, § 825; Laws 1997, LB 346, § 41.

**79-1161 Child with a disability; school district; protect rights of child; assignment of surrogate parent.**

(1) School districts shall establish and maintain procedures to protect the rights of a child with a disability whenever (a) no parents of the child can be identified, (b) the school district cannot, after reasonable efforts, locate a parent of the child, (c) the child is a ward of the state, or (d) the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6), as such section existed on January 1, 2009. Such procedures shall include the assignment of an individual to act as a surrogate for the parents. The school district shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty days after there is a determination by the district that the child needs a surrogate. In the case of a child who is a ward of the state, such surrogate may alternatively be appointed by the judge overseeing the child's care if the surrogate meets the requirements of subdivision (2)(c) of this section.

(2) The surrogate parent shall (a) have no interest which conflicts with the interest of the child, (b) have knowledge and skills that insure adequate representation, and (c) not be an employee of any agency involved in the care or education of the child. A person otherwise qualified to be a surrogate parent under this subsection is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. The surrogate parent appointed under this section may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(3) The services of the surrogate parent shall be terminated when (a) the child is no longer eligible under subsection (1) of this section, (b) a conflict of interest develops between the interest of the child and the interest of the surrogate parent, or (c) the surrogate parent fails to fulfill his or her duties as a surrogate parent. Issues arising from the selection, appointment, or removal of a surrogate parent by a school district shall be resolved through hearings established under sections 79-1162 to 79-1167. The surrogate parent and the school district which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

**Source:** Laws 1988, LB 165, § 1; R.S.1943, (1994), § 79-4,147; Laws 1996, LB 900, § 843; Laws 1997, LB 346, § 42; Laws 2009, LB549, § 44.

**79-1162 Identification, evaluation, or educational placement; hearing; copy of procedures provided; reimbursement.**

A parent, guardian, competent student of the age of majority, or school district may initiate a hearing on matters related to the initiation, change, or termination or the refusal to initiate, change, or terminate the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education or records relating thereto. A copy of the procedures specified in rules and regulations of the State Department of Education for complaints and hearings under this section shall be provided by school districts to all parents and guardians of children with disabilities upon initial consideration of the provision of services for their children with disabili-

ties. Such hearing shall be initiated by filing a petition with the State Department of Education.

**Source:** Laws 1978, LB 871, § 4; Laws 1985, LB 518, § 5; R.S.Supp.,1986, § 43-661; Laws 1987, LB 367, § 49; R.S.1943, (1994), § 79-3349; Laws 1996, LB 900, § 844; Laws 1997, LB 346, § 43; Laws 2001, LB 797, § 47.

Insofar as a State is required to provide a handicapped student with a "free appropriate public education" it satisfies that requirement by providing personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. *Adams Central School Dist. v. Deist*, 215 Neb. 284, 338 N.W.2d 591 (1983).

Parent must exhaust administrative remedies before asking a federal court to direct a different placement than that ordered by school. *Monahan v. State of Nebraska*, 687 F.2d 1164 (8th Cir. 1982).

### **79-1163 State Department of Education; conduct hearings; hearing officers; employed; qualifications; jurisdiction.**

The State Department of Education shall conduct hearings initiated under section 79-1162 using hearing officers. The State Department of Education may employ, retain, or approve such qualified hearing officers as are necessary to conduct hearings provided by sections 79-1152 and 79-1162 to 79-1167. The hearing officers shall not be persons who are employees or officers of a state or local public agency which is involved in the education or care of the child with a disability on whose behalf the hearing is being held. A person who otherwise qualifies to conduct a hearing under such sections is not 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 State Department of Education shall have exclusive original jurisdiction over cases arising under such sections, and juvenile courts shall not in any event have jurisdiction over such matters.

**Source:** Laws 1978, LB 871, § 5; Laws 1980, LB 855, § 1; Laws 1985, LB 518, § 6; R.S.Supp.,1986, § 43-662; Laws 1987, LB 367, § 50; R.S.1943, (1994), § 79-3350; Laws 1996, LB 900, § 845; Laws 1997, LB 346, § 44.

### **79-1164 Hearing; hearing officer; duties.**

Upon the receipt of a petition filed under section 79-1162, the State Department of Education 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 via certified mail to each party or attorney of record and to the Commissioner of Education.

**Source:** Laws 1980, LB 855, § 2; Laws 1985, LB 518, § 7; R.S.Supp.,1986, § 43-662.01; Laws 1987, LB 367, § 51; R.S. 1943, (1994), § 79-3351; Laws 1996, LB 900, § 846.

A hearing officer may grant compensatory relief under this section as an action that may be necessary. Adams Central School Dist. v. Deist, 214 Neb. 307, 334 N.W.2d 775 (1983).

**79-1165 Hearing; party; rights; enumerated.**

Any party at a hearing conducted under sections 79-1163 and 79-1164 shall have the right to:

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with 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 the officer's own motion.

**Source:** Laws 1978, LB 871, § 7; R.S.1943, (1984), § 43-664; Laws 1987, LB 367, § 52; R.S.1943, (1994), § 79-3352; Laws 1996, LB 900, § 847; Laws 1997, LB 346, § 45.

**79-1166 Hearing officer; subpoena witnesses; fees and expenses; failure to respond; contempt.**

The hearing officer has 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 1978, LB 871, § 8; R.S.1943, (1984), § 43-665; Laws 1987, LB 367, § 53; R.S.1943, (1994), § 79-3353; Laws 1996, LB 900, § 848.

**79-1167 Hearing officer; findings, decision, or order; judicial review.**

(1) Any party to a hearing conducted under sections 79-1162 to 79-1166 aggrieved by the findings, conclusions, or final decision and order of the hearing officer is 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 the county in which the main administrative offices of the school district are located within two years 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 shall operate to stay the enforcement of the final decision and order of the hearing officer. While judicial proceedings are pending and unless the school district and the parent or guardian otherwise agree, the child with a disability shall remain in his or her current educational placement or if applying for initial admission to a

public school such child shall, with the consent of the parent or guardian, be placed in the public school program until all such proceedings have been completed. If the decision of the hearing officer agrees with the parent or guardian of the child that a change in placement is appropriate, then that placement shall be treated as an agreement between the parties for purposes of this subsection.

(4) Within fifteen 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 State Department of Education shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer.

(5) Judicial review shall be conducted by the court without a jury. The court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate.

(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) 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 the county in which the main administrative offices of the school district are located within one year after the date of the hearing officer's final decision and order.

**Source:** Laws 1978, LB 871, § 9; Laws 1980, LB 855, § 3; Laws 1983, LB 511, § 1; R.S.1943, (1984), § 43-666; Laws 1987, LB 367, § 54; Laws 1991, LB 732, § 147; Laws 1993, LB 348, § 63; R.S.1943, (1994), § 79-3354; Laws 1996, LB 900, § 849; Laws 1997, LB 346, § 46; Laws 1999, LB 813, § 50; Laws 2003, LB 67, § 27.

**79-1168 Repealed. Laws 2009, LB 549, § 53.**

**79-1169 Repealed. Laws 2009, LB 549, § 53.**

**79-1170 Repealed. Laws 2009, LB 549, § 53.**

**79-1171 Repealed. Laws 2009, LB 549, § 53.**

**79-1172 Repealed. Laws 2009, LB 549, § 53.**

**79-1173 Repealed. Laws 2009, LB 549, § 53.**

**79-1174 Repealed. Laws 2009, LB 549, § 53.**

**79-1175 Repealed. Laws 2009, LB 549, § 53.**

**79-1176 Repealed. Laws 2009, LB 549, § 53.**

**79-1177 Repealed. Laws 2009, LB 549, § 53.**

**79-1178 Repealed. Laws 2009, LB 549, § 53.**

**79-1179 Repealed. Laws 1998, LB 904, § 3.**

**79-1180 Repealed. Laws 1998, LB 904, § 3.**

**79-1181 Repealed. Laws 1998, LB 904, § 3.**

**79-1182 Repealed. Laws 1998, LB 904, § 3.**

**79-1183 Repealed. Laws 1998, LB 904, § 3.**

**79-1183.01 Repealed. Laws 2000, LB 1135, § 34.**

**79-1184 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

#### SUBPART (ii)—DEPARTMENT DUTIES

**79-1185 Transferred to section 79-1125.01.**

**79-1186 Repealed. Laws 1999, LB 813, § 62.**

**79-1187 Repealed. Laws 1998, Spec. Sess., LB 1, § 63.**

**79-1188 Special education programs and support services; waiver of rules and regulations process; board; powers and duties.**

The State Board of Education, with the assistance of the State Department of Education, shall provide a process for the waiver of rules and regulations adopted and promulgated under Chapter 79 as such rules and regulations relate to special education programs and support services related to special education. Such waiver shall not apply to any requirements subject to federal laws or federal rules and regulations. Any entity subject to state rules and regulations for special education may apply for a waiver of such rules and regulations. To the extent practicable, the State Board of Education shall grant or deny a waiver request at the next regularly scheduled meeting of the board following receipt of the written waiver request. The waiver process shall be studied for effectiveness by the State Board of Education.

The board may grant a waiver to the rules and regulations if the process set out by the department is followed.

**Source:** Laws 1995, LB 742, § 11; R.S.Supp., 1995, § 79-349; Laws 1996, LB 900, § 870; Laws 1999, LB 813, § 52.

#### (d) BRIDGE PROGRAMS

**79-1189 Legislative findings.**

The Legislature finds that:

(1) Nebraska faces a skills gap of educated workers to serve key roles in high-demand industries;

(2) Nebraska must develop innovative education and training solutions in order to fill these roles and compete in a global economy; and

(3) Bridge programs, in which adult learners earn postsecondary educational credentials in an expedited manner, are a proven solution to this problem.

**Source:** Laws 2012, LB1079, § 1.

Termination date June 30, 2015.

**79-1190 Terms, defined.**

For purposes of sections 79-1189 to 79-1195:

(1) Bridge program means a structured career pathway program, developed in partnership among a provider of basic skills education and training, the provider of the Adult Education Program established pursuant to section 79-11,133, and a nonprofit social services organization, which assists students in obtaining academic, employability, and technical skills needed to enter and succeed in postsecondary education and training and the labor market; and

(2) Department means the State Department of Education.

**Source:** Laws 2012, LB1079, § 2.

Termination date June 30, 2015.

**79-1191 Legislative appropriation; department; provide grants to establish bridge programs.**

The Legislature shall appropriate two hundred thousand dollars each fiscal year for three consecutive fiscal years beginning with FY2012-13 to the department from the Education Innovation Fund to provide grants to establish bridge programs. Such programs shall:

(1) Provide English reading and writing and math skills required to succeed in a postsecondary educational credentialing or degree program;

(2) Lead to the attainment of college credit and a recognized postsecondary educational credential or an industry-recognized credential;

(3) Be open only to low-income participants who are co-enrolled in adult education, developmental education, or English as a second language;

(4) Target the specific workforce needs of an occupational sector within the state and provide services aimed at improving education, skills, and employment prospects for low-income adults;

(5) Use educational best practices, including, but not limited to, contextualized instructional strategies, team teaching, modularized learning, or reduced student-teacher ratios; and

(6) Provide for supportive services needed for student educational and employment success, including, but not limited to, job coaching and personal needs.

**Source:** Laws 2012, LB1079, § 3.

Termination date June 30, 2015.

**79-1192 Department; establish process for awarding grants; priority.**

The department shall establish a competitive process for awarding grants for bridge programs which meet the requirements of section 79-1191. In awarding such grants, the department shall give priority to:

(1) Applicants which leverage additional funding through local, philanthropic, or federal funding, including, but not limited to, participation in the state Supplemental Nutrition Assistance Program Employment and Training plan established pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., funding under the federal Workforce Investment Act of 1998, 29 U.S.C. 2832 et seq., as such act existed on January 1, 2012, funding under the College Access Challenge Grant Program established pursuant to the federal Higher Education Act of 1965, 20 U.S.C. 1141, as such section existed on January 1, 2012, funding under the federal Temporary Assistance to Needy Families program established in 42 U.S.C. 601 et seq., as such sections existed

on January 1, 2012, and funding under the aid to dependent children program; and

- (2) Programs serving recipients of public assistance.

**Source:** Laws 2012, LB1079, § 4.

Termination date June 30, 2015.

**79-1193 Recipient of bridge program grant; collect and provide data.**

A recipient of a bridge program grant under section 79-1191 shall collect and provide to the department data illustrating the outcomes of participants, including:

- (1) Participants' education levels, income, and employment status upon entry into the bridge program;

- (2) The total number of participants beginning the bridge program, earning college credit, earning industry-recognized credentials, and earning recognized postsecondary educational credentials;

- (3) The employment rates of participants six months, twelve months, and twenty-four months after leaving the bridge program; and

- (4) The number of participants pursuing additional education six months, twelve months, and twenty-four months after leaving the bridge program.

**Source:** Laws 2012, LB1079, § 5.

Termination date June 30, 2015.

**79-1194 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out sections 79-1189 to 79-1193.

**Source:** Laws 2012, LB1079, § 6.

Termination date June 30, 2015.

**79-1195 Department of Health and Human Services; cooperate with applicants and recipients.**

The Department of Health and Human Services shall cooperate with applicants and recipients under sections 79-1189 to 79-1193 pursuing funding under the state Supplemental Nutrition Assistance Program Employment and Training plan established pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., as such act and sections existed on January 1, 2012, the federal Temporary Assistance to Needy Families program established in 42 U.S.C. 601 et seq., as such sections existed on January 1, 2012, and funding under the aid to dependent children program.

**Source:** Laws 2012, LB1079, § 7.

Termination date June 30, 2015.

**79-1196 Sections; termination.**

Sections 79-1189 to 79-1195 terminate on June 30, 2015.

**Source:** Laws 2012, LB1079, § 8.

**79-1197 Repealed. Laws 1997, LB 347, § 59.**

## (e) PROGRAMS FOR STUDENTS WITH HEARING IMPAIRMENTS

**79-1198 Repealed. Laws 1999, LB 813, § 62.**

**79-1199 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,100 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,101 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,102 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,103 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,104 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,105 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,106 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,107 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

**79-11,108 Repealed. Laws 1998, Spec. Sess., LB 1, § 62.**

## (f) STUDENTS WHO ARE BLIND OR VISUALLY IMPAIRED

**79-11,109 Nebraska Center for the Education of Children who are Blind or Visually Impaired; State Department of Education; powers.**

The State Department of Education shall have oversight and general control of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, formerly the Nebraska School for the Visually Handicapped. The department may contract with a school district, an educational service unit, or a public institution of city, county, or state government to operate the center. The department may use, lease, or otherwise contract for the use of property and facilities formerly controlled by the Nebraska School for the Visually Handicapped for services of the center.

**Source:** Laws 1959, c. 419, § 1, p. 1409; Laws 1961, c. 412, § 3, p. 1238; R.S.1943, (1994), § 79-2001; Laws 1996, LB 900, § 891; Laws 1997, LB 346, § 53; Laws 1997, LB 347, § 44; Laws 1999, LB 813, § 53.

**79-11,110 Center; purpose.**

The purpose of the Nebraska Center for the Education of Children who are Blind or Visually Impaired is to provide special education services for persons not to exceed twenty-one years of age who are blind or visually impaired to such an extent that they cannot receive services in the public schools of this state. The center shall be the state resource center for all special education programs for children who are blind or visually impaired in Nebraska and shall provide services such as instructional materials and technology support, assessment and evaluation services, teacher training and professional development, summer and weekend programs, residential services, center-based programs,

public school combination programs, local public school support, and consultation services to school districts and educational service units.

**Source:** Laws 1959, c. 419, § 2, p. 1409; Laws 1961, c. 412, § 4, p. 1238; Laws 1969, c. 740, § 1, p. 2793; R.S.1943, (1994), § 79-2002; Laws 1996, LB 900, § 892; Laws 1997, LB 346, § 54; Laws 1999, LB 813, § 54.

**79-11,111 Repealed. Laws 1999, LB 813, § 62.**

**79-11,112 Repealed. Laws 1999, LB 813, § 62.**

**79-11,113 Repealed. Laws 1999, LB 813, § 62.**

**79-11,114 Repealed. Laws 1999, LB 813, § 62.**

**79-11,115 Repealed. Laws 1999, LB 813, § 62.**

**79-11,116 Repealed. Laws 1999, LB 813, § 62.**

**79-11,117 Repealed. Laws 1999, LB 813, § 62.**

**79-11,118 Repealed. Laws 1999, LB 813, § 62.**

**79-11,119 Repealed. Laws 1999, LB 813, § 62.**

**79-11,120 Repealed. Laws 1999, LB 813, § 62.**

#### (g) VOCATIONAL REHABILITATION

**79-11,121 Division of Rehabilitation Services; established.**

The Division of Rehabilitation Services in the State Department of Education is established.

**Source:** Laws 1955, c. 324, § 1, p. 1001; R.S.1943, (1994), § 79-1446; Laws 1996, LB 900, § 903.

**79-11,122 Division; administration; director; appointment; duties.**

The Division of Rehabilitation Services shall be administered, under the general supervision and direction of the Commissioner of Education, by a director appointed by the commissioner, with the approval of the State Board of Education, in accordance with established personnel standards and on the basis of his or her education, training, experience, and demonstrated ability in the field of vocational rehabilitation. In carrying out duties under sections 79-11,121 to 79-11,132, the director shall:

(1) With the approval of the commissioner, prepare rules and regulations for adoption and promulgation by the State Board of Education governing (a) personnel standards, (b) protection of records and confidential information, (c) eligibility investigation and determination for vocational rehabilitation services, (d) procedures for fair hearings, and (e) such other matters as the director finds necessary to carry out the purposes of such sections;

(2) With the approval of the commissioner, establish and maintain appropriate subordinate administrative units within the division;

(3) Recommend to the commissioner for the appointment of such personnel as the director deems necessary for the efficient performance of the functions of the division;

(4) Prepare and submit to the State Board of Education annual reports of the activities and expenditures and, prior to each regular session of the Legislature, estimates of sums required for carrying out the provisions of such sections and estimates of the amounts to be made available for this purpose from all sources;

(5) Make certification for disbursement, in accordance with rules and regulations, of funds available for vocational rehabilitation;

(6) With the approval of the commissioner and the State Board of Education, take such other action as the director deems necessary or appropriate to carry out the purposes of such sections; and

(7) With the approval of the commissioner and the State Board of Education, when the director deems it advisable, delegate to any officer or employee of the division such powers and duties, except the making of regulations and the making of recommendations for the appointment of personnel, as the director finds necessary to carry out the purposes of such sections.

**Source:** Laws 1955, c. 324, § 2, p. 1001; R.S.1943, (1994), § 79-1447; Laws 1996, LB 900, § 904.

**79-11,123 Division; rehabilitation services; furnish; exceptions.**

Except as otherwise provided by law for the rehabilitation of the blind, the State Board of Education through the Division of Rehabilitation Services shall provide vocational rehabilitation services to disabled individuals determined by the director to be eligible for such services. In carrying out the purposes of sections 79-11,121 to 79-11,132, the division is authorized among other things:

(1) To cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation of disabled individuals, in studying the problems involved, and in establishing, developing, and providing, in conformity with the purposes of such sections, such programs, facilities, and services as may be necessary and desirable; and

(2) To conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

**Source:** Laws 1955, c. 324, § 3, p. 1003; R.S.1943, (1994), § 79-1448; Laws 1996, LB 900, § 905.

**Cross References**

Commission for the Blind and Visually Impaired Act, see section 71-8601.

**79-11,124 Rehabilitation services; board; powers; duties.**

The State Board of Education, through the Division of Rehabilitation Services, shall (1) cooperate, pursuant to agreements with the federal government, in carrying out the purposes of any federal acts pertaining to vocational rehabilitation and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal acts and appropriations, (2) administer any legislation pursuant thereto enacted by the Legislature, (3) direct the disbursement of and administer the use of all

funds provided by the federal government or this state for the vocational rehabilitation of disabled persons of this state, and (4) do all things necessary to insure the vocational rehabilitation of disabled persons.

**Source:** Laws 1955, c. 324, § 4, p. 1003; R.S.1943, (1994), § 79-1449; Laws 1996, LB 900, § 906.

**79-11,125 Rehabilitation services; federal funds; State Treasurer; duties.**

The State Treasurer is designated as the custodian of all funds received by the state from appropriations made by the Congress of the United States or from other sources for the purpose of carrying out any state or federal act pertaining to vocational rehabilitation. The State Treasurer is authorized to receive and provide for the proper custody of such funds and to establish such special funds and accounts as may be necessary and shall make disbursements from such funds and accounts for vocational rehabilitation purposes upon certification in the manner provided in subdivision (5) of section 79-11,122.

**Source:** Laws 1955, c. 324, § 5, p. 1003; R.S.1943, (1994), § 79-1450; Laws 1996, LB 900, § 907.

**79-11,126 Division; budget estimates; federal funds; authority to comply with requirements.**

Budget estimates of the amounts of appropriations needed each biennium for vocational rehabilitation services and for the administration of such program shall be submitted as provided by law, and sufficient funds for the purpose of carrying out the provisions of sections 79-11,121 to 79-11,132 shall be appropriated by the Legislature. In the event federal funds are available to the State of Nebraska for vocational rehabilitation purposes, the Division of Rehabilitation Services is authorized to comply with such requirements as may be necessary to obtain the maximum amount of federal funds and the most advantageous proportion possible insofar as this may be done without violating other provisions of the state laws and Constitution of Nebraska.

**Source:** Laws 1955, c. 324, § 6, p. 1004; Laws 1986, LB 258, § 21; R.S.1943, (1994), § 79-1451; Laws 1996, LB 900, § 908.

**79-11,127 Rehabilitation services; eligibility.**

Vocational rehabilitation services shall be provided to any disabled individual, other than the blind, who is a resident of the state at the time of filing application therefor and whose vocational rehabilitation, as the director determines after a full investigation, can be satisfactorily achieved. Vocational rehabilitation services means any services provided directly or through public or private instrumentalities found by the director to be necessary to enable such a disabled individual to overcome his or her employment handicap and to enable him or her to engage in an occupation, including, but not limited to: Medical and vocational diagnosis; vocational guidance, counseling, and placement; rehabilitation training; physical restoration; transportation; occupational licenses; placement equipment and materials; maintenance and training books and materials; the acquisition of vending stands or other equipment and initial stocks and supplies for use by severely handicapped individuals in any type of small business, the operation of which will be improved through the management and supervision by the Division of Rehabilitation Services; and the

establishment of public and other nonprofit workshops for the severely disabled.

**Source:** Laws 1955, c. 324, § 7, p. 1004; R.S.1943, (1994), § 79-1452; Laws 1996, LB 900, § 909.

**Cross References**

Commission for the Blind and Visually Impaired Act, see section 71-8601.

**79-11,128 Rehabilitation services; aggrieved person; State Board of Education; fair hearing.**

Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the Division of Rehabilitation Services shall be entitled to a fair hearing in accordance with regulations adopted and promulgated by the State Board of Education.

**Source:** Laws 1955, c. 324, § 8, p. 1005; R.S.1943, (1994), § 79-1453; Laws 1996, LB 900, § 910.

**79-11,129 Rehabilitation services; unlawful acts.**

It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or any information concerning persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof or acquired in the course of the performance of official duties, except in response to summons, subpoena, or other order of a court.

**Source:** Laws 1955, c. 324, § 9, p. 1005; R.S.1943, (1994), § 79-1454; Laws 1996, LB 900, § 911.

**79-11,130 State Board of Education; Secretary of the United States Department of Health and Human Services; agreement; purpose.**

The State Board of Education is empowered to enter into an agreement on behalf of the State of Nebraska with the Secretary of the United States Department of Health and Human Services to carry out the provisions of the federal Social Security Act, as amended, relating to the making of determinations of disability under the provisions of such act.

**Source:** Laws 1955, c. 324, § 11, p. 1006; Laws 1973, LB 586, § 1; Laws 1991, LB 2, § 22; R.S.1943, (1994), § 79-1455; Laws 1996, LB 900, § 912.

**79-11,131 State Treasurer; custodian of funds; disbursement.**

The State Treasurer shall act as custodian of the money paid by the federal government to the state to carry out the agreement referred to in section 79-11,130 and shall disburse such money in accordance with the direction of the State Board of Education.

**Source:** Laws 1955, c. 324, § 12, p. 1006; R.S.1943, (1994), § 79-1456; Laws 1996, LB 900, § 913.

**79-11,132 Interagency agreement with Department of Health and Human Services; matching of funds required.**

The State Department of Education shall enter into an interagency agreement with the Department of Health and Human Services to provide vocational rehabilitation services and supported employment programs to persons with developmental disabilities. The Division of Rehabilitation Services of the State Department of Education shall match all state and local funds provided by the Department of Health and Human Services and developmental disabilities regions to the extent that federal vocational rehabilitation funds are available.

**Source:** Laws 1991, LB 830, § 33; R.S.1943, (1994), § 79-1457; Laws 1996, LB 900, § 914; Laws 1996, LB 1044, § 820.

**(h) ADULT EDUCATION****79-11,133 Adult Education Program; establishment; purpose.**

The Adult Education Program is established in the State Department of Education. The program shall assist in the development and strengthening of community education programs in school districts of the state and provide for the education of any person who is sixteen years of age or older, who is not enrolled in high school and is not required to be enrolled in school, who lacks sufficient mastery of basic educational skills to enable him or her to function effectively in society or does not have a certificate of graduation from a high school or equivalent educational experience, and whose lack of mastery of basic skills results in an inability to speak, read, write, or understand the English language constituting a substantial impairment of his or her ability and evidences a need for programs to help eliminate such inability and raise his or her level of education making it less likely that he or she will become dependent on others. The program shall be under the direction of a state supervisor appointed by the department.

**Source:** Laws 1927, c. 82, § 1, p. 248; C.S.1929, § 79-2301; R.S.1943, § 79-2301; Laws 1949, c. 256, § 404, p. 827; Laws 1990, LB 1090, § 28; R.S.1943, (1994), § 79-1415; Laws 1996, LB 900, § 915.

**79-11,134 Adult education; classes; authorized.**

School boards and boards of education may expend money for conducting schools and classes in school buildings, industrial establishments, places of employment, and such other places as may be expedient for the purpose of giving instruction to persons described in section 79-11,133. Such courses of instruction or study may include basic educational skills, English, history, civics, and other subjects tending to promote good citizenship and to increase vocational efficiency.

**Source:** Laws 1927, c. 82, § 2, p. 248; C.S.1929, § 79-2302; R.S.1943, § 79-2302; Laws 1949, c. 256, § 405, p. 827; Laws 1990, LB 1090, § 29; R.S.1943, (1994), § 79-1416; Laws 1996, LB 900, § 916.

**79-11,135 Adult Education Program; expenses; how paid.**

The Commissioner of Education may disburse, from funds appropriated for the State Department of Education, sufficient money for supervision, instruction, and other necessary expenses in conducting the Adult Education Program.

**Source:** Laws 1927, c. 82, § 4, p. 249; C.S.1929, § 79-2304; R.S.1943, § 79-2304; Laws 1949, c. 256, § 407, p. 828; Laws 1990, LB 1090, § 30; R.S.1943, (1994), § 79-1418; Laws 1996, LB 900, § 917.

(i) SEAMLESS DELIVERY SYSTEM PILOT PROJECT

**79-11,136 Repealed. Laws 2009, LB 549, § 53.**

**79-11,137 Repealed. Laws 2009, LB 549, § 53.**

**79-11,138 Repealed. Laws 2009, LB 549, § 53.**

**79-11,139 Repealed. Laws 2009, LB 549, § 53.**

**79-11,140 Repealed. Laws 2009, LB 549, § 53.**

**79-11,141 Repealed. Laws 2009, LB 549, § 53.**

(j) COMMUNITY-BASED NEUROBEHAVIORAL ACTION PLAN ACT

**79-11,142 Repealed. Laws 2003, LB 667, § 26.**

**79-11,143 Repealed. Laws 2003, LB 667, § 26.**

**79-11,144 Repealed. Laws 2003, LB 667, § 26.**

**79-11,145 Repealed. Laws 2003, LB 667, § 26.**

**79-11,146 Repealed. Laws 2003, LB 667, § 26.**

**79-11,147 Repealed. Laws 2003, LB 667, § 26.**

**79-11,148 Repealed. Laws 2003, LB 667, § 26.**

**79-11,149 Repealed. Laws 2003, LB 667, § 26.**

(k) HIGH-NEEDS EDUCATION COORDINATOR

**79-11,150 Repealed. Laws 2011, LB 333, § 18.**

(l) SPECIAL EDUCATION SERVICES TASK FORCE

**79-11,151 Repealed. Laws 2009, LB 154, § 27.**

**79-11,152 Repealed. Laws 2009, LB 154, § 27.**

**79-11,153 Repealed. Laws 2009, LB 154, § 27.**

**79-11,154 Repealed. Laws 2009, LB 154, § 27.**

(m) STUDENT ACHIEVEMENT COORDINATOR

**79-11,155 Student achievement coordinator; appointment; qualifications; duties.**

The Commissioner of Education shall appoint a student achievement coordinator, subject to confirmation by a majority vote of the members of the State Board of Education. The coordinator shall have a background and training in addressing the unique educational needs of low-achieving students, including students in poverty, limited English proficient students, and highly mobile students. The coordinator shall evaluate and coordinate existing resources for effective programs to increase achievement for such students across the state and shall review poverty plans submitted to the State Department of Education pursuant to section 79-1013 and limited English proficiency plans submitted to the department pursuant to section 79-1014 to ascertain successful practices being used by school districts in Nebraska and to assist school districts in improving their poverty and limited English proficiency plans, including the evaluation components. The coordinator need not review the poverty and limited English proficiency plans of each school district on an annual basis but shall develop a review schedule which assures that plans are reviewed periodically.

**Source:** Laws 2014, LB967, § 21.  
Effective date April 3, 2014.

## ARTICLE 12 EDUCATIONAL SERVICE UNITS ACT

### Cross References

**Budgets,** applicability of Nebraska Budget Act, see section 13-517.

#### Section

- 79-1201. Act, how cited.
- 79-1201.01. Terms, defined.
- 79-1202. Educational service units; name.
- 79-1203. Repealed. Laws 1998, Spec. Sess., LB 1, § 61.
- 79-1204. Role and mission.
- 79-1205. Annual adjustment to boundaries; State Board of Education; duties.
- 79-1206. Reorganization of educational service unit boundaries; legislative intent.
- 79-1207. Boundary change; initiated by petition.
- 79-1208. Boundary change; petition; contents.
- 79-1209. Boundaries; petition; changes authorized.
- 79-1210. State Board of Education; grant or deny petition; criteria.
- 79-1211. Petition; hearing; approval or rejection; effect.
- 79-1212. Reorganized units; board members.
- 79-1213. Reorganized units; warrants; purpose; interest.
- 79-1214. Repealed. Laws 1998, Spec. Sess., LB 1, § 61.
- 79-1215. Reorganized unit; adjusted tax list; contracts or leases; limitation; certificated employee; rights; transfer of records.
- 79-1216. Repealed. Laws 1997, LB 806, § 69.
- 79-1217. Governing board; name; members; election; qualification; vacancy; expenses; membership.
- 79-1217.01. Educational service unit board; establish election districts.
- 79-1218. Board; meetings; organization; duties.
- 79-1219. Board; administrator; appointment; compensation; duties.
- 79-1220. Board; offices; location.
- 79-1221. Treasurer; custodian of funds; duties; bond or insurance; conditions.
- 79-1222. Educational service unit; services; to whom provided; contracting for health services.
- 79-1223. Educational service units; real estate; personal property; services; purchase; lease; bids.
- 79-1224. Governing board; state, county, or federal funds; use; tax; levy; matching of funds.

## Section

- 79-1225. Governing board; tax; levy; limitation; exception; proceeds; when remitted.  
 79-1226. Governing board; budget; prepare; contents.  
 79-1227. Budget; publication required.  
 79-1228. Board; report of yearly activities; publication and distribution required.  
 79-1229. Annual financial report; contents; annual audit required; cost.  
 79-1230. Sections; supplemental to other law.  
 79-1231. Special education; payment; to whom.  
 79-1232. Educational service unit; insurance coverage; authorized.  
 79-1233. Access to telecomputing resources; powers and duties.  
 79-1234. Tenure; terms, defined.  
 79-1235. Tenure; contract of certificated employee; how treated.  
 79-1236. Tenure; certificated employee; contract amendment, termination, or nonrenewal; procedure; confidentiality.  
 79-1237. Tenure; board; subpoena powers.  
 79-1238. Tenure; probationary certificated employee; amendment or nonrenewal of contract; grounds; procedures.  
 79-1239. Tenure; permanent certificated employee; amendment or termination of contract; grounds; procedures.  
 79-1240. Repealed. Laws 1999, LB 5, § 1.  
 79-1241. Repealed. Laws 2009, LB 549, § 53.  
 79-1241.01. Core services; appropriation; legislative intent.  
 79-1241.02. Repealed. Laws 2010, LB 1071, § 48.  
 79-1241.03. Distribution of funds; certification by department to educational service unit and learning community; distribution.  
 79-1242. Property tax funds; use.  
 79-1243. Repealed. Laws 2010, LB 1071, § 48.  
 79-1244. Power to borrow money; conditions; authorization to accept loans from state or federal government.  
 79-1245. Educational Service Unit Coordinating Council; created; composition; funding; powers.  
 79-1246. Educational Service Unit Coordinating Council; duties; Open Meetings Act applicable.  
 79-1247. Educational Service Unit Coordinating Council; appoint distance education director; council director authorized; salaries; expenses; duties; contract authorized; other appointments authorized.  
 79-1248. Educational Service Unit Coordinating Council; powers and duties.  
 79-1249. Educational Service Unit Coordinating Council; assistance provided.

**79-1201 Act, how cited.**

Sections 79-1201 to 79-1249 shall be known and may be cited as the Educational Service Units Act.

**Source:** Laws 1996, LB 900, § 918; Laws 1998, LB 1110, § 1; Laws 1999, LB 386, § 2; Laws 2002, Second Spec. Sess., LB 5, § 2; Laws 2007, LB603, § 8.

**79-1201.01 Terms, defined.**

For purposes of the Educational Service Units Act and sections 79-1336 and 79-1337:

(1) Distance education course means a course with at least one student in any of grades kindergarten through twelve who is in a different location than the teacher and taught by a teacher employed by an educational entity utilizing either two-way interactive video or the Internet without two-way interactive video. Distance education course includes a dual-enrollment course with at least one student who is in a different location than the teacher and taught by a teacher employed by an educational entity utilizing either two-way interactive video or the Internet without two-way interactive video;

(2) Dual-enrollment course means a course taught to students for credit at both a high school and a postsecondary educational institution;

(3) Educational entity means a school district, a private, denominational, or parochial school, an educational service unit, a community college, a state college, the University of Nebraska, or a nonprofit private postsecondary educational institution;

(4) Elementary distance education course means a distance education course which is delivered utilizing two-way interactive video to students who are enrolled in any of grades kindergarten through eight;

(5) Network Nebraska means the network created pursuant to section 86-5,100;

(6) Qualified distance education course means a distance education course which meets any applicable rules and regulations of the State Department of Education, is offered for one semester of high school credit or the equivalent, and for which all of the participating educational entities are required to have access to Network Nebraska;

(7) Technical training means training to equip educators with knowledge about the skills and tools necessary to infuse technological resources and software applications into the curriculum to be used in classrooms with and by students and includes, but is not limited to, computer workstation troubleshooting, distance education, educational software, Internet resources, local area network management, multimedia presentation tools, and strategic planning;

(8) Technology includes technical training and technology infrastructure;

(9) Technology infrastructure means hardware-related items necessary for schools to interact electronically throughout the state, including, but not limited to, physical connections, wiring, servers, routers, switches, domain name service, and operating systems and human resources necessary to maintain infrastructure, including, but not limited to, systems engineers, programmers, webmasters, and help desk staff; and

(10) Two-way interactive video distance education course means a distance education course in which a teacher delivers instruction to students in a different location than the teacher using two-way interactive video on at least two different days per week during the course.

**Source:** Laws 1999, LB 386, § 3; Laws 2007, LB603, § 9.

#### **79-1202 Educational service units; name.**

The official name of each educational service unit shall be Educational Service Unit No. . . . . of the State of Nebraska, and the individual number of each unit shall be determined by the State Board of Education. For educational service units existing on January 1, 1998, the number of the unit shall remain the same. For educational service units created by merger, the number of the unit shall be the number of one of the educational service units dissolving into the new educational service unit. For all other newly created educational service units, the number shall be any number not otherwise assigned to an existing educational service unit.

**Source:** Laws 1965, c. 504, § 1, p. 1606; Laws 1969, c. 746, § 1, p. 2807; Laws 1984, LB 994, § 19; Laws 1987, LB 688, § 12; R.S.1943,

(1994), § 79-2201; Laws 1996, LB 900, § 919; Laws 1997, LB 806, § 55; Laws 1998, Spec. Sess., LB 1, § 50; Laws 2001, LB 797, § 48; Laws 2008, LB1154, § 12.

This article sustained as constitutional. *Frye v. Haas*, 182 Neb. 73, 152 N.W.2d 121 (1967).

### **79-1203 Repealed. Laws 1998, Spec. Sess., LB 1, § 61.**

#### **79-1204 Role and mission.**

(1) The role and mission of the educational service units is to serve as educational service providers in the state's system of elementary and secondary education.

(2) Educational service units shall:

(a) Act primarily as service agencies in providing core services and services identified and requested by member school districts;

(b) Provide for economy, efficiency, and cost-effectiveness in the cooperative delivery of educational services;

(c) Provide educational services through leadership, research, and development in elementary and secondary education;

(d) Act in a cooperative and supportive role with the State Department of Education and school districts in development and implementation of long-range plans, strategies, and goals for the enhancement of educational opportunities in elementary and secondary education; and

(e) Serve, when appropriate and as funds become available, as a repository, clearinghouse, and administrator of federal, state, and private funds on behalf of school districts which choose to participate in special programs, projects, or grants in order to enhance the quality of education in Nebraska schools.

(3) Core services shall be provided by educational service units to all member school districts. Core services shall be defined by each educational service unit as follows:

(a) Core services shall be within the following service areas in order of priority: (i) Staff development which shall include access to staff development related to improving the achievement of students in poverty and students with diverse backgrounds; (ii) technology, including distance education services; and (iii) instructional materials services;

(b) Core services shall improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state's system of elementary and secondary education;

(c) Core services shall provide schools with access to services that:

(i) The educational service unit and its member school districts have identified as necessary services;

(ii) Are difficult, if not impossible, for most individual school districts to effectively and efficiently provide with their own personnel and financial resources;

(iii) Can be efficiently provided by each educational service unit to its member school districts; and

(iv) Can be adequately funded to ensure that the service is provided equitably to the state's public school districts;

(d) Core services shall be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis; and

(e) Core services shall be provided by the educational service unit in a manner that minimizes the costs of administration or service delivery to member school districts.

(4) Educational service units shall meet minimum accreditation standards set by the State Board of Education that will:

(a) Provide for accountability to taxpayers;

(b) Assure that educational service units are assisting and cooperating with school districts to provide for equitable and adequate educational opportunities statewide; and

(c) Assure a level of quality in educational programs and services provided to school districts by the educational service units.

(5) Educational service units may contract to provide services to:

(a) Nonmember public school districts;

(b) Nonpublic school systems;

(c) Other educational service units; and

(d) Other public agencies, under the Interlocal Cooperation Act and the Joint Public Agency Act.

(6) Educational service units shall not regulate school districts unless specifically provided pursuant to another section of law.

**Source:** Laws 1987, LB 688, § 1; R.S.1943, (1994), § 79-2201.02; Laws 1996, LB 900, § 921; Laws 1997, LB 806, § 57; Laws 1999, LB 87, § 89; Laws 2006, LB 1208, § 8; Laws 2007, LB641, § 34; Laws 2009, LB549, § 45; Laws 2013, LB410, § 13.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

#### **79-1205 Annual adjustment to boundaries; State Board of Education; duties.**

On or before July 31, 2007, and on or before July 31 of each year thereafter, the State Board of Education shall adjust the boundaries of any educational service unit the boundaries of which do not align with the boundaries of the member school districts on July 1 of such year. Such boundary adjustments shall align the boundaries of the educational service unit with the boundaries of the member school districts as the boundaries of the member school districts existed on July 1 of such year. Such boundary adjustments shall be referred to the appropriate county and educational service unit officials, and such officials shall implement the adjustments and make the necessary changes in the educational service unit maps and tax records.

**Source:** Laws 2007, LB603, § 10.

#### **79-1206 Reorganization of educational service unit boundaries; legislative intent.**

The Legislature finds that from time to time there is a need to change the boundaries of educational service units in response to changes in student population and in student and school needs as well as changes in the taxable wealth and financial resources of the educational service units. It is the intent of the Legislature to establish an orderly process for locally initiated reorganization of educational service unit boundaries. The purpose of sections 79-1206 to 79-1211 is to establish the statutory framework for such process and to empower the State Board of Education to make changes in educational service unit boundaries based on statutory criteria.

**Source:** Laws 1987, LB 688, § 2; R.S.1943, (1994), § 79-2202.03; Laws 1996, LB 900, § 923.

#### **79-1207 Boundary change; initiated by petition.**

On and after January 1, 1989, petitions to the State Board of Education to change educational service unit boundaries may be initiated by a resolution adopted by a majority vote of any educational service unit board or any school board. In addition, such boards shall initiate a petition for reorganization upon the receipt of a petition signed by ten percent of the legal voters of such educational service unit or school district and certified by the county clerk or election commissioner.

**Source:** Laws 1987, LB 688, § 3; R.S.1943, (1994), § 79-2202.04; Laws 1996, LB 900, § 924; Laws 1997, LB 345, § 46.

#### **79-1208 Boundary change; petition; contents.**

Petitions to the State Board of Education to change educational service unit boundaries shall include a description of the proposed boundaries and shall be accompanied by a plan of reorganization which shall include (1) a summary of the reasons for the proposed reorganization, (2) a plan for the provision of services to school districts affected by any reorganization plan, (3) when a petition proposes the dissolution of an entire educational service unit or units for attachment to an existing educational service unit or for the merger of two or more educational service units into a new educational service unit, a summary of the terms on which such reorganization is made, including provision for the utilization of existing facilities, equipment, and materials and provision for the disposition of assets and any unbonded indebtedness of affected educational service units, (4) when a petition deals with the attachment of new territory to an existing educational service unit, verification of approval by majority vote of the receiving educational service unit governing board, and (5) a plan for the establishment of new election districts as required under section 79-1217.

**Source:** Laws 1987, LB 688, § 4; Laws 1990, LB 486, § 2; R.S.1943, (1994), § 79-2202.05; Laws 1996, LB 900, § 925; Laws 2007, LB603, § 11.

#### **79-1209 Boundaries; petition; changes authorized.**

A petition to reorganize educational service units may include the following:

(1) A transfer of a school district or districts from one established educational service unit to another established educational service unit;

(2) A withdrawal from an established educational service unit by two or more school districts to form a new educational service unit;

(3) An addition of a school district or districts which are not part of an educational service unit to an established or new educational service unit; and

(4) The dissolution of one or more entire educational service units for attachment to existing educational service units or the merger of two or more educational service units into a new educational service unit.

**Source:** Laws 1987, LB 688, § 5; R.S.1943, (1994), § 79-2202.06; Laws 1996, LB 900, § 926; Laws 1997, LB 806, § 58.

**79-1210 State Board of Education; grant or deny petition; criteria.**

The State Board of Education shall grant or deny any petition to change educational service unit boundaries based upon the following criteria:

(1) The educational needs of students in the affected school districts and the affected educational service units;

(2) The economic viability of the proposal as it relates to affected established educational service units or affected proposed educational service units;

(3) Any community of interest among affected school districts and affected educational service units;

(4) Geographic proximity as such would affect the ability of affected educational service units to deliver service in a cost-effective manner;

(5) Compliance with the requirements of the Educational Service Units Act; and

(6) In the dissolution of one or more entire educational service units, evidence of consent from each educational service unit board and two-thirds of the school boards or boards of education of member school districts representing a majority of students in each affected educational service unit.

For petitions that change educational service unit boundaries by transferring a learning community member district from one educational service unit to another educational service unit with existing territory in such learning community, the requirements of subdivisions (1), (2), (3), and (4) of this section shall be deemed to have been met if the affected educational service units will each have at least two member school districts after such transfer.

**Source:** Laws 1987, LB 688, § 6; R.S.1943, (1994), § 79-2202.07; Laws 1996, LB 900, § 927; Laws 1997, LB 806, § 59; Laws 2008, LB1154, § 13.

**79-1211 Petition; hearing; approval or rejection; effect.**

The State Board of Education, within ninety days after the receipt of any petition described in section 79-1208, shall hold a public hearing on the proposed reorganization plan. At the board's option, it may appoint a hearing officer to conduct the public hearing and issue a summary of the evidence presented. The board may also direct the appointed hearing officer to recommend a decision to the board, which recommendation shall not be binding on the board. Within one hundred twenty days after the receipt of such petition, the board shall approve or reject such petition. If the board rejects the petition, it shall clearly state its reasons for such rejection. Approved petitions for reorganization of educational service unit boundaries shall be referred to the

appropriate county and educational service unit officials to implement the plan and to make the necessary changes in the educational service unit maps and tax records.

**Source:** Laws 1987, LB 688, § 7; Laws 1990, LB 486, § 3; R.S.1943, (1994), § 79-2202.08; Laws 1996, LB 900, § 928; Laws 2007, LB603, § 12.

#### **79-1212 Reorganized units; board members.**

Members of boards of educational service units existing prior to approval of any plan of reorganization shall serve as board members of educational service units which are reorganized pursuant to sections 79-1206 to 79-1211 until the expiration of their original terms. Such persons shall be members of the board of the reorganized educational service unit in which they reside. Within thirty days after approval of any plan of reorganization by the State Board of Education, the president of the board of each educational service unit being reorganized shall call a meeting of board members of such educational service unit. At such meeting, members of each such board shall appoint one member from each election district to be created pursuant to the plan of reorganization not having representation on such board to serve until the next general election. The board shall take all necessary action to prepare for operation of the reorganized educational service unit following approval of any plan of reorganization by the State Board of Education. Expenses incurred by such board prior to such times shall be prorated between the counties comprising the educational service unit on the basis of the assessed valuation of such counties.

**Source:** Laws 1969, c. 746, § 3, p. 2810; Laws 1987, LB 688, § 18; R.S.1943, (1994), § 79-2203.02; Laws 1996, LB 900, § 929; Laws 1998, Spec. Sess., LB 1, § 51; Laws 2007, LB603, § 13; Laws 2009, LB549, § 46.

#### **79-1213 Reorganized units; warrants; purpose; interest.**

The board of any reorganized educational service unit pursuant to sections 79-1206 to 79-1211 is authorized to issue warrants in an amount necessary for the following purposes: (1) To pay its expenses for a one-year period beginning one year after approval of any plan of reorganization by the State Board of Education; and (2) to finance the programs and services of the reorganized educational service unit beginning one year after the approval of any plan of reorganization by the State Board of Education until the distribution of the proceeds of its first tax levy less the amount of cash on hand and to be received during such period. Whenever any board of a reorganized educational service unit issues warrants, such board shall make a tax levy at the next tax-levying period sufficient to pay the same and the interest thereon. Such warrants shall bear interest at the rate of not more than six percent per annum and shall be recorded by the treasurer of the board and redeemed as provided in Chapter 77, article 22, and amendments thereto.

**Source:** Laws 1969, c. 746, § 4, p. 2811; Laws 1987, LB 688, § 19; R.S.1943, (1994), § 79-2203.03; Laws 1996, LB 900, § 930; Laws 1998, Spec. Sess., LB 1, § 52.

**79-1214 Repealed. Laws 1998, Spec. Sess., LB 1, § 61.****79-1215 Reorganized unit; adjusted tax list; contracts or leases; limitation; certificated employee; rights; transfer of records.**

(1) Within one year after the date of approval of any plan of reorganization, the county treasurer of each county shall adjust the tax list of the educational service unit in accordance with the changes in boundaries of the educational service units pursuant to sections 79-1206 to 79-1211 so that the uncollected taxes levied upon property that has been transferred to another educational service unit shall when collected be placed to the credit of the reorganized educational service unit to which the property is a part.

(2) The board of every existing educational service unit that is to become reorganized pursuant to sections 79-1206 to 79-1211 shall not employ any person for a term greater than one year. Any contract or lease made by such a governing body is hereby declared to be null and void if it extends for a period greater than one year unless validated by the board of the reorganized educational service unit. This subsection is not inconsistent with and does not negate any rights of any educational service unit certificated employees to continued employment pursuant to sections 79-846 to 79-849 and 79-1234 to 79-1239. The provisions of this subsection do not negate any previously negotiated collective-bargaining agreements between educational service unit certificated employees and the educational service unit covering a period of time greater than one year.

(3) Any certificated employee who, in the year immediately preceding a reorganization, has been employed one-half time or more by an educational service unit which is affected by an approved petition to change educational service unit boundaries shall, upon the effective date of the reorganization of the educational service unit boundaries pursuant to sections 79-1206 to 79-1211, have the option, for purposes of reduction in force, to be considered an employee of either the educational service unit at which he or she has been employed or of the educational service unit which will provide services to the affected school district. If such employee elects to be considered an employee of the educational service unit which will serve the affected school district, the employee shall not lose any right of seniority or tenure status after the transfer. If the certificated employee in the year immediately preceding reorganization is assigned less than one-half time to a school district petitioning or a school district in an educational service unit petitioning for reorganization, then such certificated employee shall continue to be an employee of the educational service unit existing prior to reorganization.

(4) All official records of existing educational service units which are reorganized in whole or in part pursuant to sections 79-1206 to 79-1211 shall be transferred to the office of the Commissioner of Education for storage.

**Source:** Laws 1969, c. 746, § 6, p. 2812; Laws 1987, LB 688, § 21; R.S.1943, (1994), § 79-2204.01; Laws 1996, LB 900, § 932; Laws 1998, Spec. Sess., LB 1, § 53.

**79-1216 Repealed. Laws 1997, LB 806, § 69.****79-1217 Governing board; name; members; election; qualification; vacancy; expenses; membership.**

(1) All educational service units shall be governed by a board to be known as the Board of Educational Service Unit No. . . . . Until the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member from each county and four members at large, all of whom shall reside within the geographical boundaries of the educational service unit, but no more than two of the members at large shall be appointed or elected from the same county unless any one county within the educational service unit has a population in excess of one hundred fifty thousand inhabitants or the educational service unit consists of only one county. Beginning on the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member elected to represent each election district established pursuant to section 79-1217.01. Successors to the members initially appointed pursuant to section 79-1212 shall be elected pursuant to section 32-515.

(2) Vacancies in office shall occur as set forth in section 32-560, except as otherwise provided in section 79-1212 regarding the requirement to live in the district represented, or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the geographical boundaries of the educational service unit for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. Whenever any vacancy occurs on the board, the remaining members of such board shall appoint an individual residing within the election district of the educational service unit for which the vacancy exists and meeting the qualifications for the office to fill such vacancy for the balance of the unexpired term.

(3) Members of the board shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties under the Educational Service Units Act as provided in sections 81-1174 to 81-1177.

(4) Except as provided in subsection (5) of this section, any joint school district located in two or more counties shall be considered a part of the educational service unit in which the greater number of school-age children of such joint school district reside.

(5) Any Class I district which is part of a Class VI district shall be considered a part of the educational service unit of which the Class VI district is a member. If the Class VI district has removed itself from an educational service unit, each Class I district which is part of such Class VI district may continue its existing membership in an educational service unit or may change its status relative to membership in an educational service unit in accordance with section 79-1209. The patrons of a Class I district maintaining membership in an educational service unit pursuant to this subsection shall have the same rights and privileges as other patrons of the educational service unit, and the taxable valuation of the taxable property within the geographic boundaries of such Class I district shall be subject to the educational service unit's tax levy established pursuant to section 79-1225.

(6) The administrator of each educational service unit, prior to July 1 of each year in which a statewide primary election is to be held, shall certify to the election commissioner or county clerk of each county located within the unit the corporate name of each school district, as described in section 79-405,

located within the county. If a school district is a joint school district located in two or more counties, the administrator shall certify to each election commissioner or county clerk the educational service unit of which the school district is considered to be a part.

(7) An educational service unit may consist of a single school district if the single school district is either a Class IV or Class V school district. An educational service unit with only one member school district shall be governed by the school board of such school district and shall participate in one or more of the statewide projects managed by the Educational Service Unit Coordinating Council.

**Source:** Laws 1965, c. 504, § 3, p. 1608; Laws 1967, c. 560, § 1, p. 1844; Laws 1969, c. 747, § 2, p. 2818; Laws 1969, c. 746, § 8, p. 2814; Laws 1977, LB 201, § 17; Laws 1978, LB 632, § 10; Laws 1981, LB 204, § 163; Laws 1987, LB 688, § 16; Laws 1988, LB 1142, § 12; Laws 1991, LB 511, § 65; Laws 1992, LB 245, § 70; Laws 1992, LB 1063, § 200; Laws 1992, Second Spec. Sess., LB 1, § 171; Laws 1994, LB 76, § 607; R.S.1943, (1994), § 79-2203; Laws 1996, LB 900, § 934; Laws 1997, LB 345, § 47; Laws 1997, LB 347, § 47; Laws 2001, LB 797, § 49; Laws 2002, LB 647, § 2; Laws 2007, LB603, § 14; Laws 2010, LB965, § 2; Laws 2012, LB446, § 1.

#### **79-1217.01 Educational service unit board; establish election districts.**

By December 31, 2007, and after each decennial census pursuant to section 32-553, each educational service unit board, except boards of educational service units with only one member school district, shall divide the territory of the educational service unit into at least five and up to twelve numbered districts for the purpose of electing members to the board in compliance with section 32-553. Such districts shall be compact and contiguous and substantially equal in population. The newly established election districts shall apply beginning with the nomination and election of educational service unit board members in 2008.

**Source:** Laws 2007, LB603, § 15.

#### **79-1218 Board; meetings; organization; duties.**

The board of each educational service unit shall meet and organize by naming one of its members as president, one as vice president, and one as secretary. The board shall employ a treasurer who shall be paid a salary to be fixed by the board.

The board of the educational service unit shall determine the participation of the educational service unit in providing supplementary educational services. If the board of the educational service unit does not provide supplementary educational services, it shall meet during each succeeding January to determine the participation in providing supplementary educational services for that calendar year. Meetings may be held by means of videoconferencing or telephone conference in accordance with subsections (2) and (3) of section 84-1411.

**Source:** Laws 1965, c. 504, § 4, p. 1610; Laws 1969, c. 748, § 1, p. 2822; Laws 1969, c. 746, § 5, p. 2811; Laws 1987, LB 688, § 20; R.S.1943, (1994), § 79-2204; Laws 1996, LB 900, § 935; Laws 2009, LB361, § 1.

**79-1219 Board; administrator; appointment; compensation; duties.**

Each board of an educational service unit deciding to provide supplementary services shall appoint and fix the compensation and duties of an administrator, who shall be a person experienced in public school administration and who shall hold at least a standard administrative certificate. With the advice of the administrator, the board shall also employ and fix the compensation and duties of such professional and clerical assistants as shall be necessary. No board member of an educational service unit shall be employed by the educational service unit board on which he or she is a board member.

**Source:** Laws 1965, c. 504, § 5, p. 1610; Laws 1987, LB 688, § 22; R.S.1943, (1994), § 79-2205; Laws 1996, LB 900, § 936.

**79-1220 Board; offices; location.**

(1) The board shall determine the location within the educational service unit of its principal office and may, if necessary for the performance of its duties under the Educational Service Units Act, establish one or more other offices at such locations as it shall determine within the educational service unit. The board may acquire office space by purchase out of funds appropriated to it for educational purposes or may rent or lease such space as may be necessary. The board shall also acquire the personal property necessary for the performance of its duties.

(2) When due to boundary changes provided for in sections 79-1206 to 79-1211 the principal office of an educational service unit is no longer located within the boundaries of the educational service unit, then the affected educational service unit may maintain its principal office outside the boundaries of the unit.

**Source:** Laws 1965, c. 504, § 6, p. 1611; Laws 1987, LB 688, § 23; R.S.1943, (1994), § 79-2206; Laws 1996, LB 900, § 937.

**79-1221 Treasurer; custodian of funds; duties; bond or insurance; conditions.**

The treasurer shall be the custodian of all funds of the board of the educational service unit. He or she shall attend meetings of the board, shall prepare and submit in writing a monthly report of the state of its finances, and shall pay out money of the board only upon a warrant signed by the president, or in his or her absence by the vice president, and countersigned by the secretary. The treasurer shall give bond or evidence of equivalent insurance coverage, payable to the board, in such sum as the board shall determine conditioned for the faithful performance of the duties as treasurer of the board and for the safekeeping and proper disbursement of all funds of the board collected or received by him or her. Such bond shall be signed by a corporate surety company or insurance company authorized to do business within this state. Such bond or insurance coverage may be enlarged at any time the board deems such enlargement necessary or advisable. The cost of such bond or insurance coverage shall be paid out of funds of the board.

**Source:** Laws 1965, c. 504, § 7, p. 1611; Laws 1969, c. 748, § 2, p. 2822; R.S.1943, (1994), § 79-2207; Laws 1996, LB 900, § 938; Laws 2006, LB 860, § 1.

**79-1222 Educational service unit; services; to whom provided; contracting for health services.**

When requested in writing by local school boards or boards of education, the board of each educational service unit may, at its discretion and within the limitations imposed by sections 79-1224 and 79-1225, (1) provide supplementary services to (a) the requesting school systems within its geographical area, (b) requesting school systems not within its geographical area to the extent allowed under the Educational Service Units Act, and (c) any other educational service unit, (2) plan and coordinate educational services within its geographical area whenever such services are offered on a cooperating basis between local school districts, and (3) contract for educational services with the board of any other educational service unit, any school district, any other educational agency, or any appropriate state or federal officer or agency, except that within that area of the service unit in which there exists an organized, full-time, approved city-county, multicounty, or regional health department with health services available, the educational service unit, if health services are provided, shall first seek to contract for school health services with such department for an amount of compensation agreeable to both such unit and board. The board of each educational service unit may charge for a portion or all of the costs of the additional services authorized by this section. If an educational service unit on December 25, 1969, has a health service facility, this section does not prevent the continued use by the unit of such facility. The educational service unit may contract with such health department to provide school health services for that area of the educational service unit not served by such city-county, multicounty, or regional health department.

**Source:** Laws 1965, c. 504, § 8, p. 1611; Laws 1969, c. 749, § 1, p. 2823; Laws 1969, c. 750, § 1, p. 2825; Laws 1972, LB 928, § 1; Laws 1979, LB 57, § 2; Laws 1987, LB 688, § 24; Laws 1994, LB 1310, § 15; R.S.1943, (1994), § 79-2208; Laws 1996, LB 900, § 939; Laws 1997, LB 347, § 48.

**79-1223 Educational service units; real estate; personal property; services; purchase; lease; bids.**

In order to carry out the purposes provided in section 79-1204, educational service units may purchase, lease, or lease-purchase real estate, equipment, supplies, services, and personal property for their own use. Educational service units may, either individually or collectively, purchase, lease, lease-purchase, or act as purchase agent for administrative and instructional supplies, instructional equipment, instructional services, and personal property for resale only to educational entities. When an educational service unit advertises for bids for administrative or instructional supplies, instructional equipment, instructional services, and personal property, acceptance of any bid submitted to the educational service unit shall obligate the educational service unit to award the contract in accordance with the plans and specifications and in the quantities set forth in the bid documents.

**Source:** Laws 1971, LB 734, § 1; Laws 1979, LB 57, § 1; Laws 1987, LB 688, § 13; R.S.1943, (1994), § 79-2201.01; Laws 1996, LB 900, § 940; Laws 2006, LB 1208, § 9; Laws 2007, LB603, § 21.

**79-1224 Governing board; state, county, or federal funds; use; tax; levy; matching of funds.**

The board of each educational service unit may receive, for the purpose for which made available, any school district, county, state, or federal funds made available to it, or funds or property received from any other source, and may use tax revenue from the levy of the educational service unit for operational expenses and for the purpose of matching any funds that may be made available to it on a matching basis by any state or federal agency. The board of each educational service unit may utilize such personnel or services that may lawfully be offered by any state or federal agency or governmental unit.

**Source:** Laws 1965, c. 504, § 9, p. 1612; Laws 1972, LB 928, § 2; R.S.1943, (1994), § 79-2209; Laws 1996, LB 900, § 941.

**79-1225 Governing board; tax; levy; limitation; exception; proceeds; when remitted.**

(1) After the adoption of its budget statement, the board for each educational service unit, except as provided in subsection (2) of this section, may levy a tax in the amount which it requires under its adopted budget statement to be received from taxation. The levy shall be subject to the limits established by section 77-3442. The amount of such levy shall be certified by the secretary of the educational service unit board to the county board of equalization of each county in which any part of the geographical area of the educational service unit is located on or before September 20 of each year. Such 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 such tax, as collected, shall be remitted to the treasurer of the board on or before the fifteenth day of each month or more frequently as provided in section 77-1759.

(2) For fiscal year 2013-14 and each fiscal year thereafter, only an educational service unit which has four or more member school districts or an educational service unit composed of a single Class IV or Class V school district may levy a tax on the taxable value of the taxable property within the geographic boundaries of the educational service unit.

**Source:** Laws 1965, c. 504, § 10, p. 1612; Laws 1969, c. 145, § 47, p. 700; Laws 1969, c. 746, § 7, p. 2813; Laws 1977, LB 391, § 2; Laws 1979, LB 178, § 2; Laws 1979, LB 187, § 248; Laws 1980, LB 599, § 15; Laws 1992, LB 1063, § 201; Laws 1992, Second Spec. Sess., LB 1, § 172; Laws 1993, LB 348, § 50; Laws 1993, LB 452, § 3; Laws 1993, LB 734, § 53; Laws 1995, LB 452, § 34; R.S.Supp.,1995, § 79-2210; Laws 1996, LB 900, § 942; Laws 1996, LB 1114, § 67; Laws 1999, LB 141, § 14; Laws 1999, LB 287, § 3; Laws 1999, LB 386, § 4; Laws 2008, LB1154, § 14; Laws 2012, LB446, § 2.

Tax is authorized by this section to be levied for educational service units by the board, and is constitutional. *Frye v. Haas*, 182 Neb. 73, 152 N.W.2d 121 (1967).

**79-1226 Governing board; budget; prepare; contents.**

The board of each educational service unit, prior to the levying of any tax as provided by law, shall prepare a budget for the operation and maintenance of the educational service unit for the ensuing year. This budget shall itemize the

contemplated expenditures and the expected revenue from taxation received by the educational service unit, from available federal, state, and county sources, from contractual revenue from school districts, and from all other agencies and sources.

**Source:** Laws 1969, c. 700, § 1, p. 2699; Laws 1972, LB 928, § 3; R.S.1943, (1994), § 79-2210.01; Laws 1996, LB 900, § 943.

**Cross References**

Budget requirements, see section 13-517.

**79-1227 Budget; publication required.**

A summary of the prepared yearly budget of an educational service unit shall be published one time in a legal newspaper published in or of general circulation in each county in the unit at least five days before a meeting at which such budget shall be considered for adoption by the board. Such publication shall also specify the date, time, and place of the public hearing at which the budget will be considered and any tax levy made.

**Source:** Laws 1969, c. 700, § 2, p. 2699; Laws 1990, LB 1090, § 38; R.S.1943, (1994), § 79-2210.02; Laws 1996, LB 900, § 944.

**79-1228 Board; report of yearly activities; publication and distribution required.**

The board of an educational service unit shall cause to be published by November 1 of each year a brief report of the yearly activities of the board. The report shall include the amount of revenue received and expenditures itemized by categories. This publication shall be for one time in a newspaper of general circulation distributed in each county in the educational service unit. A copy of the report shall be distributed to each member school district by November 1 of each year.

**Source:** Laws 1969, c. 700, § 3, p. 2699; Laws 1990, LB 1090, § 39; R.S.1943, (1994), § 79-2210.03; Laws 1996, LB 900, § 945.

**79-1229 Annual financial report; contents; annual audit required; cost.**

(1) On or before January 31 of each year, the administrator of each educational service unit shall submit to the Commissioner of Education a report described as the annual financial report showing (a) the amount of money received from all sources during the year and the amount of money expended by the educational service unit during the year, (b) other information as necessary to fulfill the requirements of section 79-1241.03, and (c) such other information as the commissioner directs.

(2) The board of each educational service unit shall cause a complete and comprehensive annual audit to be made of the books, accounts, records, and affairs of the educational service unit. The audits shall be conducted annually, except that the Auditor of Public Accounts may determine an audit of less frequency to be appropriate but not less than once in any three-year period. The board of each educational service unit may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to conduct the audit and shall be responsible for the cost of the audit pursuant to the contract. Such audit shall be conducted in

the same manner as audits of county officers. The original copy of the audit shall be filed in the office of the Auditor of Public Accounts.

**Source:** Laws 1969, c. 700, § 4, p. 2699; Laws 1985, Second Spec. Sess., LB 29, § 4; Laws 1987, LB 183, § 5; R.S.1943, (1994), § 79-2210.04; Laws 1996, LB 900, § 946; Laws 2008, LB988, § 51.

#### **79-1230 Sections; supplemental to other law.**

Sections 79-1202 to 79-1230 shall be supplemental to any other law and shall not affect the reorganization of school districts as provided in the Reorganization of School Districts Act.

**Source:** Laws 1965, c. 504, § 12, p. 1612; Laws 1991, LB 511, § 66; Laws 1992, LB 245, § 71; R.S.1943, (1994), § 79-2212; Laws 1996, LB 900, § 947.

#### **Cross References**

Reorganization of School Districts Act, see section 79-432.

#### **79-1231 Special education; payment; to whom.**

When special education is provided by an educational service unit for children with disabilities as defined in section 79-1118.01, the payments provided by sections 79-1126 to 79-1144 shall be made to such educational service unit.

**Source:** Laws 1967, c. 517, § 1, p. 1737; Laws 1986, LB 1177, § 38; Laws 1987, LB 367, § 72; R.S.1943, (1994), § 79-2213; Laws 1996, LB 900, § 948; Laws 1997, LB 346, § 58.

#### **79-1232 Educational service unit; insurance coverage; authorized.**

The board of any educational service unit may permit its members to participate in the educational service unit's hospitalization, medical, surgical, accident, sickness, or term life insurance coverage or any one or more of such coverages. A board member electing to participate in the insurance program of the educational service unit shall pay both the employee and the employer portions of the premium for such coverage.

An educational service unit board which opts to permit its members to participate in insurance coverage under this section shall report quarterly at a board meeting the board members who have elected such coverage. Such a report shall be made available in the educational service unit office for review by the public upon request.

**Source:** Laws 1972, LB 1177, § 4; R.S.1943, (1994), § 79-2214; Laws 1996, LB 900, § 949; Laws 2008, LB850, § 3.

#### **79-1233 Access to telecomputing resources; powers and duties.**

Each educational service unit shall provide access for all school districts within the geographical area served by the unit to telecomputing resources, which shall include the capacity to receive and transmit distance education courses on at least a regional basis beginning on or before August 1, 2007, through the installation of necessary equipment at each educational service unit location or through interlocal agreements with other educational service units and shall provide support for training users to meet their specific telecomput-

ing and distance education needs. School districts may annually elect prior to a date determined by the educational service unit not to connect to such telecomputing resources. Each educational service unit shall also develop, with the State Department of Education, a plan which provides for connecting the telecomputing and distance education equipment of such school districts with the telecomputing and distance education equipment of the unit.

Educational service units may enter into agreements pursuant to the Interlocal Cooperation Act and the Joint Public Agency Act to carry out this section. Such agreements may include, but need not be limited to, provisions requiring any school district having telecomputing or distance education equipment connected to the educational service unit's telecomputing or distance education equipment to pay periodic fees necessary to cover the cost of such usage.

**Source:** Laws 1993, LB 348, § 49; Laws 1993, LB 452, § 2; Laws 1995, LB 860, § 3; R.S.Supp., 1995, § 79-2225; Laws 1996, LB 900, § 950; Laws 1999, LB 87, § 90; Laws 1999, LB 141, § 15; Laws 1999, LB 386, § 5; Laws 2006, LB 1208, § 10; Laws 2007, LB603, § 22; Laws 2010, LB1071, § 27.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

#### **79-1234 Tenure; terms, defined.**

For purposes of sections 79-1234 to 79-1239, unless the context otherwise requires:

- (1) Board means the governing board of any educational service unit;
- (2) Certificated employee means any teacher, nurse, or other person required to have a certificate from the State Department of Education who is employed by an educational service unit;
- (3) Just cause means incompetency, neglect of duty, unprofessional conduct, insubordination, immorality, physical or mental incapacity, or other conduct which interferes substantially with the continued performance of duties or a change in circumstances such as financial exigency or a diminution of demand for services by the school districts served by the educational service unit necessitating a reduction in the number of teachers or nurses to be employed by the board;
- (4) Permanent certificated employee means a certificated employee (a) who has served under a contract with the educational service unit for at least three successive years under any contract which was entered into to create initial employment on or after September 1, 1986, or (b) who was initially employed by the educational service unit prior to September 1, 1986; and
- (5) Probationary certificated employee means a certificated employee who has served under a contract with the educational service unit for less than three successive years under any contract which was entered into to create initial employment on or after September 1, 1986.

**Source:** Laws 1986, LB 997, § 1; R.S.1943, (1994), § 79-2216; Laws 1996, LB 900, § 951.

#### **79-1235 Tenure; contract of certificated employee; how treated.**

The contract of a certificated employee shall be deemed renewed and remain in full force and effect unless amended, terminated, or not renewed in accordance with sections 79-1234 to 79-1239.

**Source:** Laws 1986, LB 997, § 2; R.S.1943, (1994), § 79-2217; Laws 1996, LB 900, § 952.

**79-1236 Tenure; certificated employee; contract amendment, termination, or nonrenewal; procedure; confidentiality.**

(1) Any certificated employee whose contract of employment may be amended, terminated, or not renewed for the following school year shall be notified in writing on or before April 15 of each year of such possible action on the contract. If the certificated employee wishes a hearing, a written request shall be sent to the secretary of the board or the administrator of the educational service unit within seven calendar days after receipt of the written notice. If a hearing on such amendment, termination, or nonrenewal is not requested within the time provided in this section, the board shall make a final determination. With regard to all hearings under sections 79-1234 to 79-1239, the certificated employee shall be advised in writing at least five days prior to the hearing of the date, time, and place of the hearing. All such hearings shall be held within thirty days after the date of the request for the hearing, except when the parties or their representatives, by a mutual agreement confirmed in writing, extend the time for hearings or final determinations by the board under such sections. Unless continued by written agreement between the parties or their representatives, final action by the board shall be taken on or before May 15 of each year.

(2) Prior to the hearing or action on the matter, if requested by the certificated employee, the notice of possible amendment, termination, or nonrenewal and the supporting reasons shall be considered a confidential employment matter as provided in sections 79-539, 79-8,109, and 84-1410 and shall not be released to the public or news media.

**Source:** Laws 1986, LB 997, § 3; R.S.1943, (1994), § 79-2218; Laws 1996, LB 900, § 953.

**79-1237 Tenure; board; subpoena powers.**

The board may on its own behalf, or shall upon the request of the certificated employee, his or her representative, or the educational service unit's administration, (1) subpoena and compel the attendance of witnesses residing within or outside this state for the purpose of appearing and testifying at any hearing provided for in sections 79-1234 to 79-1239 and for the purpose of taking the deposition of such witnesses in the manner prescribed by law for the taking of depositions in civil actions in the district courts and (2) issue subpoenas for the production of any papers, books, accounts, and documents.

**Source:** Laws 1986, LB 997, § 4; R.S.1943, (1994), § 79-2219; Laws 1996, LB 900, § 954.

**79-1238 Tenure; probationary certificated employee; amendment or nonrenewal of contract; grounds; procedures.**

(1) Upon request by the probationary certificated employee as provided in subsection (1) of section 79-1236, notice shall be provided which shall contain written reasons for the proposed amendment or nonrenewal of the probation-

ary certificated employee's contract and shall be sufficiently specific so as to provide such employee the opportunity to prepare a response. The reasons set forth in the notice shall be employment related.

(2) The board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal or amendment is employment related and such nonrenewal or amendment is not for constitutionally impermissible reasons. Such nonrenewal or amendment shall be in accordance with sections 79-1234 to 79-1239. Amendment or nonrenewal for reasons of reduction in force shall be in accordance with the procedures provided in sections 79-846 to 79-849 and 79-1234 to 79-1239.

(3) At any time prior to the holding of a hearing or prior to final determination by the board to amend or not renew the contract involved, the probationary certificated employee may submit a letter of resignation for the ensuing school year, which resignation shall be accepted by the board.

(4) The hearing, if requested, involving the question of the nonrenewal or amendment of a probationary certificated employee's contract shall not be a formal due process hearing but shall be an informal hearing before the board at which the probationary certificated employee involved or his or her representative shall be afforded the opportunity to discuss and explain to the board his or her position with regard to continued employment, to present information, and to ask questions of those appearing on behalf of the administration of the educational service unit. Such hearing shall be in closed session at the request of the probationary certificated employee involved or his or her representative and upon affirmative vote of the majority of the board members present and voting, but the formal action of the board for nonrenewal or amendment shall be in open session.

(5) The hearing for a probationary certificated employee may be held before a committee of the board consisting of not less than three of the board's total members, and total membership of the committee shall be odd numbered. Notice of such hearing shall be sent to all board members five days prior to such hearing. If a hearing is held before a committee, the majority opinion of the committee shall constitute a recommendation to the board, with the final determination being made by a majority vote of the members of the board without additional hearing.

**Source:** Laws 1986, LB 997, § 5; R.S.1943, (1994), § 79-2220; Laws 1996, LB 900, § 955.

**79-1239 Tenure; permanent certificated employee; amendment or termination of contract; grounds; procedures.**

(1) The board by a vote of the majority of its members may determine that a permanent certificated employee's contract shall be amended or terminated for any of the following reasons: (a) Just cause as defined in section 79-1234; (b) reduction in force as set forth in sections 79-846 to 79-849; (c) a change of leave-of-absence policy; (d) failure of the permanent certificated employee upon written request of the board or the administrators of the educational service unit to accept employment for the next school year within the time designated in the request, except that the permanent certificated employee shall not be required to signify such acceptance prior to March 15 of each year; or (e) revocation or suspension of the permanent certificated employee's certificate by the State Board of Education.

(2) If a hearing is requested by the permanent certificated employee, the formal due process hearing for the purpose of this section means a hearing procedure adopted by the board which contains at least the following: (a) Notification to the permanent certificated employee in writing at least five days prior to the hearing of the grounds alleged for the termination or amendment of the permanent certificated employee's contract; (b) upon request of the permanent certificated employee, a list of the names of any witnesses who will be called to testify against the certificated employee and an opportunity to examine any documents that will be presented at the hearing shall be provided at least five days prior to the hearing; (c) the right to be represented; and (d) an opportunity to cross-examine all witnesses, examine all documents, and present evidence material to the issues.

(3) Notice of the hearing shall be given in accordance with the Open Meetings Act. Upon an affirmative vote of a majority of the board's members present and voting and upon specific request of the permanent certificated employee or the permanent certificated employee's representative, the hearing shall be conducted in a closed session, but the formal action of the board shall be taken in open session.

(4) A majority of the members of the board shall render its decision to amend or terminate a permanent certificated employee's contract based solely upon the evidence produced at the hearing, shall reduce its findings and determination to writing, and shall deliver a written copy of the findings and determination to the permanent certificated employee.

**Source:** Laws 1986, LB 997, § 6; R.S.1943, (1994), § 79-2221; Laws 1996, LB 900, § 956; Laws 2003, LB 685, § 24; Laws 2004, LB 821, § 30.

#### Cross References

Open Meetings Act, see section 84-1407.

**79-1240 Repealed. Laws 1999, LB 5, § 1.**

**79-1241 Repealed. Laws 2009, LB 549, § 53.**

**79-1241.01 Core services; appropriation; legislative intent.**

To carry out section 79-1241.03, it is the intent of the Legislature to appropriate for each fiscal year the amount appropriated in the prior year increased by the percentage growth in the fall membership of member districts plus the basic allowable growth rate described in section 79-1025. For purposes of this section, fall membership has the same meaning as in section 79-1003. Fall membership data used to compute growth shall be from the two most recently available fall membership reports.

**Source:** Laws 1998, LB 1110, § 3; Laws 1999, LB 386, § 6; Laws 2006, LB 1208, § 11; Laws 2007, LB603, § 25; Laws 2009, LB549, § 47; Laws 2010, LB1071, § 28.

**79-1241.02 Repealed. Laws 2010, LB 1071, § 48.**

**79-1241.03 Distribution of funds; certification by department to educational service unit and learning community; distribution.**

(1) Two percent of the funds appropriated for core services and technology infrastructure shall be transferred to the Educational Service Unit Coordinating

Council. The remainder of such funds shall be distributed pursuant to subsections (2) through (6) of this section.

(2)(a) The distance education and telecommunications allowance for each educational service unit shall equal eighty-five percent of the difference of the costs for telecommunications services, for access to data transmission networks that transmit data to and from the educational service unit, and for the transmission of data on such networks paid by the educational service unit as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to 47 U.S.C. 254, as such section existed on January 1, 2007, for the educational service unit as reported on the annual financial report for the most recently available complete data year and minus any receipts from school districts or other educational entities for payment of such costs as reported on the annual financial report of the educational service unit.

(b) The base allocation of each educational service unit shall equal two and one-half percent of the funds appropriated for distribution pursuant to this section.

(c) The satellite office allocation for each educational service unit shall equal one percent of the funds appropriated for distribution pursuant to this section for each office of the educational service unit, except the educational service unit headquarters, up to the maximum number of satellite offices. The maximum number of satellite offices used for the calculation of the satellite office allocation for any educational service unit shall equal the difference of the ratio of the number of square miles within the boundaries of the educational service unit divided by four thousand minus one with the result rounded to the closest whole number.

(d) The statewide adjusted valuation shall equal the total adjusted valuation for all member districts of educational service units pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the Tax Equity and Educational Opportunities Support Act for the school fiscal year for which the distribution is being calculated pursuant to this section.

(e) The adjusted valuation for each educational service unit shall equal the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section, except that such adjusted valuation for member school districts that are also member districts of a learning community shall be reduced by fifty percent for school fiscal years 2008-09 and 2009-10, thirty percent for school fiscal year 2010-11, and ten percent for each school fiscal year thereafter. The adjusted valuation for each learning community shall equal fifty percent, for school fiscal years 2008-09 and 2009-10, thirty percent, for school fiscal year 2010-11, and ten percent, for each school fiscal year thereafter, of the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section.

(f) The local effort rate shall equal \$0.0135 per one hundred dollars of adjusted valuation.

(g) The statewide student allocation shall equal the difference of the sum of the amount appropriated for distribution pursuant to this section plus the

product of the statewide adjusted valuation multiplied by the local effort rate minus the distance education and telecommunications allowance, base allocation, and satellite office allocation for all educational service units and minus any adjustments required by subsection (5) of this section.

(h) The sparsity adjustment for each educational service unit and learning community shall equal the sum of one plus one-tenth of the ratio of the square miles within the boundaries of the educational service unit divided by the fall membership of the member school districts for the school fiscal year immediately preceding the school fiscal year for which the distribution is being calculated pursuant to this section.

(i) The adjusted students for each multidistrict educational service unit shall equal the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated of the member school districts that will not be members of a learning community and ninety percent of the fall membership for such school fiscal year of the member school districts that will be members of a learning community pursuant to this section multiplied by the sparsity adjustment for the educational service unit. The adjusted students for each single-district educational service unit shall equal ninety-five percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated if the member school district will not be a member of a learning community and eighty-five percent of the fall membership for such school fiscal year if the member school district will be a member of a learning community pursuant to this section, multiplied by the sparsity adjustment for the educational service unit. The adjusted students for each learning community shall equal ten percent of the fall membership for such school fiscal year of the member school districts multiplied by the sparsity adjustment for the learning community.

(j) The per student allocation shall equal the statewide student allocation divided by the total adjusted students for all educational service units and learning communities.

(k) The student allocation for each educational service unit and learning community shall equal the per student allocation multiplied by the adjusted students for the educational service unit or learning community.

(l) The needs for each educational service unit shall equal the sum of the distance education and telecommunications allowance, base allocation, satellite office allocation, and student allocation for the educational service unit and the needs for each learning community shall equal the student allocation for the learning community.

(m) The distribution of core services and technology infrastructure funds for each educational service unit and learning community shall equal the needs for each educational service unit or learning community minus the product of the adjusted valuation for the educational service unit or learning community multiplied by the local effort rate.

(3) If an educational service unit is the result of a merger or received new member school districts from another educational service unit, the educational service unit shall be considered a new educational service unit for purposes of this section. For each new educational service unit, the needs minus the distance education and telecommunications allowance for such new educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place or the new member school districts are received,

equal an amount not less than the needs minus the distance education and telecommunications allowance for the portions of the educational service units transferred to the new educational service unit for the fiscal year immediately preceding the merger or receipt of new member school districts, except that if the total amount available to be distributed pursuant to subsections (2) through (6) of this section for the year for which needs are being calculated is less than the total amount distributed pursuant to such subsections for the fiscal year immediately preceding the merger or receipt of new member school districts, the minimum needs minus the distance education and telecommunications allowance for each educational service unit pursuant to this subsection shall be reduced by a percentage equal to the ratio of such difference divided by the total amount distributed pursuant to subsections (2) through (6) of this section for the fiscal year immediately preceding the merger or receipt of new member school districts. The needs minus the distance education and telecommunications allowance for the portions of educational service units transferred to the new educational service unit for the fiscal year immediately preceding a merger or receipt of new member school districts shall equal the needs minus the distance education and telecommunications allowance calculated for such fiscal year pursuant to subsections (2) through (6) of this section for any educational service unit affected by the merger or the transfer of school districts multiplied by a ratio equal to the valuation that was transferred to the new educational service unit for which the minimum is being calculated divided by the total valuation of the educational service unit transferring the territory.

(4) For fiscal years 2010-11 through 2013-14, each educational service unit shall have needs minus the distance education and telecommunications allowance equal to an amount not less than ninety-five percent of the needs minus the distance education and telecommunications allowance for the immediately preceding fiscal year, except that if the total amount available to be distributed pursuant to subsections (2) through (6) of this section for the year for which needs are being calculated is less than the total amount distributed pursuant to such subsections for the immediately preceding fiscal year, the minimum needs minus the distance education and telecommunications allowance for each educational service unit pursuant to this subsection shall be reduced by a percentage equal to the ratio of such difference divided by the total amount distributed pursuant to subsections (2) through (6) of this section.

(5) If the minimum needs minus the distance education and telecommunications allowance pursuant to subsection (3) or (4) of this section for any educational service unit exceeds the amount that would otherwise be calculated for such educational service unit pursuant to subsection (2) of this section, the statewide student allocation shall be reduced such that the total amount to be distributed pursuant to this section equals the appropriation for core services and technology infrastructure funds and no educational service unit has needs minus the distance education and telecommunications allowance less than the greater of any minimum amounts calculated for such educational service unit pursuant to subsections (3) and (4) of this section.

(6) The State Department of Education shall certify the distribution of core services and technology infrastructure funds pursuant to subsections (2) through (6) of this section to each educational service unit and learning community on or before July 1 of each year for the following school fiscal year. Except as otherwise provided in this subsection, any funds appropriated for

distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each month beginning in September of each school fiscal year and ending in June. Funds to be distributed to a learning community in school fiscal year 2010-11 shall be distributed in ten payments on the first business day of each month beginning in September 2010 and ending in June 2011, with each of the first five payments equal as nearly as possible to seventeen percent of the amount to be distributed and with each of the last five payments equal as nearly as possible to three percent of the amount to be distributed. Funds distributed to educational service units pursuant to this section shall be used for core services and technology infrastructure with the approval of representatives of two-thirds of the member school districts of the educational service unit, representing a majority of the adjusted students in the member school districts used in calculations pursuant to this section for such funds. The valuation of individual school districts shall not be considered in the utilization of such core services or technology infrastructure funds by member school districts for funds received after July 1, 2010. Funds distributed to learning communities on or before January 15, 2011, shall be used for learning community purposes with the approval of the learning community coordinating council. Funds distributed to learning communities after January 15, 2011, shall be used for evaluation and research pursuant to section 79-2104.02 with the approval of the learning community coordinating council.

(7) For purposes of this section, the determination of whether or not a school district will be a member of an educational service unit or a learning community shall be based on the information available May 1 for the following school fiscal year.

(8) It is the intent of the Legislature that:

(a) Funding for core services and technology infrastructure for each educational service unit consist of both amounts received pursuant to this section and an amount greater than or equal to the product of the adjusted valuation for the educational service unit multiplied by the local effort rate; and

(b) Each multidistrict educational service unit use an amount equal to at least five percent of such funding for core services and technology infrastructure for cooperative projects between member school districts and that each such educational service unit use an amount equal to at least five percent of such funding for core services and technology infrastructure for statewide projects managed by the Educational Service Unit Coordinating Council.

**Source:** Laws 2007, LB603, § 24; Laws 2008, LB1154, § 15; Laws 2009, LB549, § 48; Laws 2010, LB1070, § 11; Laws 2012, LB446, § 3.

#### Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

#### **79-1242 Property tax funds; use.**

Funds generated from the property tax levy shall only be used for purposes approved by representatives of two-thirds of the member school districts in an educational service unit, representing a majority of the students in the member school districts. The valuation of individual school districts shall not be the only consideration in determining the utilization of such funds received after July 1, 2010. Each educational service unit shall prepare and transmit a written proposal of core services offerings and use of the property tax levy to all

member school districts. The member school districts through their designated representatives shall indicate their approval or disapproval of the proposal within thirty calendar days after receipt of the proposal, and failure to so indicate within such time period shall be deemed approval of the proposal.

**Source:** Laws 1997, LB 806, § 62; Laws 1999, LB 363, § 1; Laws 2010, LB1070, § 12; Laws 2012, LB446, § 4.

**79-1243 Repealed. Laws 2010, LB 1071, § 48.**

**79-1244 Power to borrow money; conditions; authorization to accept loans from state or federal government.**

(1)(a) Any educational service unit may borrow money to the amount of seventy percent of the unexpended balance of total anticipated receipts of the general fund for the current fiscal year and the following fiscal year. Total anticipated receipts of the general fund for the current fiscal year and the following fiscal year means a sum equal to the total of (i) the anticipated receipts from the current existing levy multiplied by two, (ii) the anticipated receipts from the state for core services and technology infrastructure for the current fiscal year and the following fiscal year, (iii) the anticipated receipts from the United States for the current fiscal year and the following fiscal year, and (iv) the anticipated receipts from other sources for the current fiscal year and the following fiscal year.

(b) Any educational service unit may execute and deliver in evidence thereof its promissory notes which it is hereby authorized and empowered to make and negotiate, bearing a rate of interest set by the educational service unit board and maturing not more than two fiscal years from the date thereof. Such notes, before they are negotiated, shall be presented to the treasurer of the educational service unit and registered by him or her and shall be payable out of the funds collected by such educational service unit in the order of their registry after the payment of prior registered warrants but prior to the payment of any warrant subsequently registered, except that if both warrants and notes are registered, the total of such registered notes and warrants shall not exceed one hundred percent of the unexpended balance of the total anticipated receipts of the general fund of such educational service unit for the current fiscal year and the following fiscal year. For the purpose of making such calculation, such total anticipated receipts shall not include any anticipated receipts against which the educational service unit has borrowed and issued notes pursuant to this section in either the current or the immediately preceding fiscal year.

(2) In addition to the authority granted by subsection (1) of this section, any educational service unit may accept interest-free or low-interest loans from the state or federal government and may execute and deliver in evidence thereof its promissory notes maturing not more than twenty years from the date of execution.

(3) In addition to the authority granted by subsections (1) and (2) of this section, any educational service unit may enter into loan agreements for the purpose of borrowing money from financial institutions, including banks, in amounts not in excess of seventy percent of the unexpended balance of its current existing levy. As evidence of such borrowing, an educational service unit may execute and deliver one or more written loan agreements but shall not be required to execute and deliver separate promissory notes for each borrowing under such agreements. Money borrowed pursuant to such agreements

shall bear interest at such rate or rates and shall become due and be repaid as provided in such agreements. Any such agreement shall provide for repayment in full at least once each fiscal year and shall be for a term not exceeding one fiscal year. Any such agreement shall be registered upon books kept by the treasurer of the educational service unit, and money borrowed pursuant to such agreement shall be paid out of funds collected upon the current existing levy prior to the payment of any warrant or note registered subsequent to any such loan agreement. If an educational service unit has any such loan agreement or agreements outstanding and has warrants or notes registered, as described in subsection (1) of this section, the total amount (a) of borrowings pursuant to such loan agreement or agreements and (b) of registered notes and warrants shall not exceed one hundred percent of the unexpended balance of the current existing levy.

(4) Nothing in this section shall be construed to exempt an educational service unit from the terms and conditions contained in sections 10-701 to 10-716.

**Source:** Laws 2002, Second Spec. Sess., LB 5, § 1.

**79-1245 Educational Service Unit Coordinating Council; created; composition; funding; powers.**

(1) The Educational Service Unit Coordinating Council is created as of July 1, 2008. On such date the assets and liabilities of the Distance Education Council shall be transferred to the Educational Service Unit Coordinating Council. The council shall be composed of one administrator from each educational service unit. The council shall be funded from two percent of the core services and technology infrastructure funding appropriated pursuant to section 79-1241.03, appropriations by the Legislature for distance education, and fees established for services provided to educational entities.

(2) The council is a political subdivision and a public body corporate and politic of this state, exercising public powers separate from the participating educational service units. The council shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic but shall not have taxing power.

(3) The council shall have power (a) to sue and be sued, (b) to have a seal and alter the same at will or to dispense with the necessity thereof, (c) to make and execute contracts and other instruments, (d) to receive, hold, and use money and real and personal property, (e) to hire and compensate employees, including certificated employees, (f) to act as a fiscal agent for statewide initiatives being implemented by employees of one or more educational service units, and (g) from time to time, to make, amend, and repeal bylaws, rules, and regulations not inconsistent with sections 79-1245 to 79-1249. Such power shall only be used as necessary or convenient to carry out and effectuate the powers and purposes of the council.

**Source:** Laws 2007, LB603, § 16; Laws 2010, LB1071, § 29.

**79-1246 Educational Service Unit Coordinating Council; duties; Open Meetings Act applicable.**

(1) The Educational Service Unit Coordinating Council shall work toward statewide coordination to provide the most cost-effective services for the stu-

dents, teachers, and school districts in each educational service unit. The council's duties include, but are not limited to:

- (a) Preparation of strategic plans to assure the cost-efficient and equitable delivery of services across the state;
- (b) Administration of statewide initiatives and provision of statewide services; and
- (c) Coordination of distance education.

(2) All activities conducted by the council shall be conducted in accordance with the Open Meetings Act. This section does not require or provide for state control of the operations of any educational service unit or abridge the governance ability, rights, or responsibilities of any educational service unit board.

**Source:** Laws 2007, LB603, § 17.

Cross References

Open Meetings Act, see section 84-1407.

**79-1247 Educational Service Unit Coordinating Council; appoint distance education director; council director authorized; salaries; expenses; duties; contract authorized; other appointments authorized.**

The Educational Service Unit Coordinating Council shall appoint a distance education director and may appoint a council director, both of whom shall hold office at the pleasure of the council. The council director and the distance education director shall receive such salaries as the council determines and shall be reimbursed for their actual expenses incurred in the performance of their duties. The council may contract with individual educational service units for the employment of the council director or the distance education director, except that the supervisory responsibilities for such employees shall remain with the council.

The council director and the distance education director shall perform duties as the council directs and shall not be members of the council. The council may also appoint or retain such other persons as it may deem necessary for the performance of its functions and shall prescribe their duties, fix their compensation, and provide for reimbursement of their actual and necessary expenses within the amounts available in the budget of the council.

**Source:** Laws 2007, LB603, § 18; Laws 2010, LB1071, § 30.

**79-1248 Educational Service Unit Coordinating Council; powers and duties.**

The powers and duties of the Educational Service Unit Coordinating Council include, but are not limited to:

- (1) Providing public access to lists of qualified distance education courses;
- (2) Collecting and providing school schedules for participating educational entities;
- (3) Facilitation of scheduling for qualified distance education courses;
- (4) Brokering of qualified distance education courses to be purchased by educational entities;
- (5) Assessment of distance education needs and evaluation of distance education services;

(6) Compliance with technical standards as set forth by the Nebraska Information Technology Commission and academic standards as set forth by the State Department of Education related to distance education;

(7) Establishment of a system for scheduling courses brokered by the council and for choosing receiving educational entities when the demand for a course exceeds the capacity as determined by either the technology available or the course provider;

(8) Administration of learning management systems, either through the staff of the council or by delegation to an appropriate educational entity, with the funding for such systems provided by participating educational entities; and

(9) Coordination with educational service units and postsecondary educational institutions to provide assistance for instructional design for both two-way interactive video distance education courses and the offering of graduate credit courses in distance education.

**Source:** Laws 2006, LB 1208, § 20; R.S.Supp.,2006, § 79-1334; Laws 2007, LB603, § 19; Laws 2010, LB1071, § 31.

**79-1249 Educational Service Unit Coordinating Council; assistance provided.**

The Educational Service Unit Coordinating Council shall only provide assistance in brokering or scheduling courses to educational entities that have access to Network Nebraska. All costs to the council associated with assisting private, denominational, or parochial schools and private postsecondary educational institutions shall be paid by such private, denominational, or parochial school or private postsecondary educational institution. Any services of the council may also be offered to other public entities with access to Network Nebraska on a contractual basis.

**Source:** Laws 2006, LB 1208, § 21; R.S.Supp.,2006, § 79-1335; Laws 2007, LB603, § 20; Laws 2010, LB1071, § 32.

**ARTICLE 13**

**EDUCATIONAL TECHNOLOGY AND TELECOMMUNICATIONS**

(a) EDUCATIONAL TECHNOLOGY

Section

- 79-1301. Repealed. Laws 2006, LB 1208, § 32.
- 79-1302. Educational technology; legislative findings.
- 79-1303. Educational Technology Center; created; mission.
- 79-1304. Educational Technology Center; duties.
- 79-1305. Repealed. Laws 2006, LB 1208, § 32.
- 79-1306. Repealed. Laws 2006, LB 1208, § 32.
- 79-1307. Repealed. Laws 2006, LB 1208, § 32.
- 79-1308. Repealed. Laws 2003, LB 67, § 34.
- 79-1309. Repealed. Laws 2003, LB 67, § 34.
- 79-1310. Repealed. Laws 2006, LB 1208, § 32.
- 79-1311. Repealed. Laws 2003, LB 67, § 34.

(b) EDUCATIONAL TELECOMMUNICATIONS

- 79-1312. Act, how cited.
- 79-1313. Nebraska Educational Telecommunications Commission; creation; purpose.
- 79-1314. Terms, defined.
- 79-1315. Nebraska Educational Telecommunications Commission; membership; appointment; term; expenses.
- 79-1316. Educational telecommunications; commission; powers; duties.
- 79-1317. Educational telecommunications; commission; establish fees.

## Section

- 79-1318. Educational telecommunications; commission; instrumentality of state; may sue and be sued.
- 79-1319. Educational telecommunications; operation on noncommercial basis; exceptions; service available to all schools and colleges; costs.
- 79-1320. State Educational Telecommunications Fund; created; use; investment.
- 79-1321. Repealed. Laws 2014, LB 692, § 8.
- 79-1322. Commission; power of eminent domain; purpose.
- 79-1323. Repealed. Laws 2014, LB 692, § 8.
- 79-1324. Repealed. Laws 2014, LB 692, § 8.
- 79-1325. Repealed. Laws 2014, LB 692, § 8.
- 79-1326. Repealed. Laws 2002, LB 93, § 27.
- 79-1327. Repealed. Laws 2002, LB 93, § 27.

## (c) DISTANCE EDUCATION

- 79-1328. Repealed. Laws 2006, LB 1208, § 32.
- 79-1329. Repealed. Laws 2006, LB 1208, § 32.
- 79-1330. Repealed. Laws 2006, LB 1208, § 32.
- 79-1331. Repealed. Laws 2010, LB 1071, § 48.
- 79-1332. Repealed. Laws 2007, LB 603, § 39.
- 79-1333. Repealed. Laws 2007, LB 603, § 39.
- 79-1334. Transferred to section 79-1248.
- 79-1335. Transferred to section 79-1249.
- 79-1336. Distance education equipment reimbursement; application; contents; repayment; when; department decisions; appeal.
- 79-1337. Distance education incentives; application; contents; calculation of incentives; denial of incentives; appeal.

## (a) EDUCATIONAL TECHNOLOGY

**79-1301 Repealed. Laws 2006, LB 1208, § 32.**

**79-1302 Educational technology; legislative findings.**

The Legislature finds that the utilization of appropriate technologies can provide enhanced educational services and broadened educational opportunities for Nebraska learners. It is the intent of the Legislature: (1) To utilize technology to provide effective and efficient distance learning; (2) to provide assistance and direction in the training of Nebraska teachers in uses of technology for instruction through electronic means; (3) to establish and support an electronic data network and data bases for Nebraska educators and learners; (4) to support the evaluation and dissemination of models of successful technologies which improve instruction or learning; (5) to provide support for cooperative education-technology ventures in partnership with public or private entities; and (6) to provide support for cooperative purchase or leasing of administrative or instructional software or software licenses in partnership with schools, educational service units, and other states.

**Source:** Laws 1988, LB 1117, § 1; R.S.1943, (1994), § 79-4,140.09; Laws 1996, LB 900, § 958; Laws 2006, LB 1208, § 14.

**79-1303 Educational Technology Center; created; mission.**

The Educational Technology Center within the State Department of Education is created. The mission of the center is to achieve the legislative goals set forth in section 79-1302 and to provide leadership and support for the integration of technology and innovation into Nebraska elementary and secondary

schools in order to provide quality education and equal opportunity for Nebraska learners.

**Source:** Laws 1988, LB 1117, § 2; Laws 1990, LB 1090, § 9; R.S.1943, (1994), § 79-4,140.10; Laws 1996, LB 900, § 959; Laws 2003, LB 67, § 28; Laws 2006, LB 1208, § 15.

**79-1304 Educational Technology Center; duties.**

The Educational Technology Center has, but is not limited to, the following specific duties:

- (1) To evaluate Internet-based distance education courses;
- (2) To provide clearinghouse services for information concerning current technology projects as well as software and hardware development;
- (3) To serve as a demonstration site for state-of-the-art hardware appropriate to an educational setting;
- (4) To provide technical assistance to educators in working with hardware and software;
- (5) To provide inservice and preservice training for educators, in conjunction with other educational entities as defined in section 79-1201.01, in the use of computers, telecommunications, and other electronic technologies appropriate to an educational setting;
- (6) To sponsor activities which promote the use of technology in the classroom;
- (7) To serve as a liaison between business and education interests in technology communication;
- (8) To experiment with various applications or technology in education;
- (9) To assist schools in planning for and selecting appropriate technologies;
- (10) To design, implement, and evaluate pilot projects to assess the usefulness of technologies in school management, curriculum, instruction, and learning;
- (11) To seek partnerships with the Nebraska Educational Telecommunications Commission, the University of Nebraska, the state colleges, community colleges, educational service units, the Nebraska Library Commission, and other public and private entities in order to make effective use of limited resources;
- (12) To encourage sharing among school districts to deliver cost-efficient and effective distance learning; and
- (13) To identify, evaluate, and disseminate information on school projects which have the potential to enhance the quality of instruction or learning.

**Source:** Laws 1988, LB 1117, § 3; R.S.1943, (1994), § 79-4,140.11; Laws 1996, LB 900, § 960; Laws 2006, LB 1208, § 16; Laws 2007, LB603, § 28.

**79-1305 Repealed. Laws 2006, LB 1208, § 32.**

**79-1306 Repealed. Laws 2006, LB 1208, § 32.**

**79-1307 Repealed. Laws 2006, LB 1208, § 32.**

**79-1308 Repealed. Laws 2003, LB 67, § 34.**

**79-1309 Repealed. Laws 2003, LB 67, § 34.**

**79-1310 Repealed. Laws 2006, LB 1208, § 32.**

**79-1311 Repealed. Laws 2003, LB 67, § 34.**

(b) EDUCATIONAL TELECOMMUNICATIONS

**79-1312 Act, how cited.**

Sections 79-1312 to 79-1322 shall be known and may be cited as the Nebraska Educational Telecommunications Act.

**Source:** Laws 1963, c. 468, § 6, p. 1500; Laws 1984, LB 645, § 7; Laws 1988, LB 939, § 2; Laws 1995, LB 89, § 1; R.S.Supp., 1995, § 79-2106; Laws 1996, LB 900, § 968; Laws 2002, LB 93, § 20; Laws 2014, LB692, § 1.  
Effective date July 18, 2014.

**79-1313 Nebraska Educational Telecommunications Commission; creation; purpose.**

The Nebraska Educational Telecommunications Act creates the Nebraska Educational Telecommunications Commission for the purpose of (1) promoting and establishing noncommercial educational telecommunications facilities within the State of Nebraska, (2) providing noncommercial educational telecommunications programs throughout the State of Nebraska by digital broadcast, by closed-circuit transmission, by Internet-based delivery, or by other telecommunications technology distribution systems, and (3) operating statewide educational and public radio and television networks, facilities, and services. The commission shall seek funding from federal, state, foundation, and private sources for capital construction and annual operations.

**Source:** Laws 1963, c. 468, § 1, p. 1497; Laws 1984, LB 645, § 1; Laws 1986, LB 461, § 1; R.S.1943, (1994), § 79-2101; Laws 1996, LB 900, § 969; Laws 1997, LB 347, § 50; Laws 2014, LB692, § 2.  
Effective date July 18, 2014.

**79-1314 Terms, defined.**

For purposes of the Nebraska Educational Telecommunications Act, unless the context otherwise requires:

(1) Telecommunications includes statewide digital public television and public radio transmissions and other telecommunications technology distribution systems; and

(2) Educational telecommunications means the organization and use of programs, technologies, and devices to store, archive, retrieve, process, display, receive, or transmit, by any means, information for the purpose of carrying out educational or other governmental entities' objectives.

**Source:** Laws 1984, LB 645, § 2; Laws 1986, LB 461, § 3; R.S.1943, (1994), § 79-2106.01; Laws 1996, LB 900, § 970; Laws 1997, LB 347, § 51; Laws 2014, LB692, § 3.  
Effective date July 18, 2014.

**79-1315 Nebraska Educational Telecommunications Commission; membership; appointment; term; expenses.**

(1) The Nebraska Educational Telecommunications Commission shall be composed of eleven members, as follows: (a) The Commissioner of Education or his or her designee; (b) the President of the University of Nebraska or his or her designee; (c) a representative of the state colleges; (d) a representative of the community colleges; (e) a representative of private educational institutions of the State of Nebraska; and (f) six members of the general public, none of whom shall be associated with any of the institutions listed in subdivisions (a) through (e) of this subsection and two of whom shall be from each congressional district. No more than four of the members shall be actively engaged in the teaching profession or administration of an educational institution.

(2) The members described in subdivisions (1)(c) through (1)(f) of this section shall be appointed by the Governor with the approval of the Legislature for terms of four years, and the term of the member described in subdivision (1)(d) of this section shall be the same as the term of the member described in subdivision (1)(c) of this section. Vacancies shall be filled by the Governor for the unexpired term. The commission shall be nonpolitical in character, and selection of the members of the commission shall be made on a nonpolitical basis. No member of the commission shall receive any compensation for his or her services. Reimbursement shall be provided for reasonable and necessary expenses incurred in attending scheduled meetings of the commission as provided in sections 81-1174 to 81-1177.

If the Commissioner of Education is unable to attend a commission meeting, the deputy commissioner of education or his or her designee is authorized to act on his or her behalf, and if the President of the University of Nebraska or his or her designee is unable to attend a commission meeting, the Executive Vice President and Provost for academic affairs is authorized to act on his or her behalf.

**Source:** Laws 1963, c. 468, § 2, p. 1497; Laws 1965, c. 534, § 1, p. 1679; Laws 1969, c. 741, § 1, p. 2794; Laws 1969, c. 742, § 1, p. 2795; Laws 1981, LB 204, § 161; Laws 1984, LB 645, § 3; Laws 1988, LB 939, § 1; Laws 1991, LB 43, § 1; Laws 1994, LB 854, § 1; R.S.1943, (1994), § 79-2102; Laws 1996, LB 900, § 971; Laws 1997, LB 347, § 52.

**79-1316 Educational telecommunications; commission; powers; duties.**

The powers and duties of the Nebraska Educational Telecommunications Commission are:

(1) To promote and sponsor a noncommercial educational television network to serve a series of interconnecting units throughout the State of Nebraska;

(2) To promote and support locally operated or state-operated noncommercial educational radio stations with satellite receiving capabilities and improved transmitter coverage;

(3) To apply for and to receive and hold such authorizations, licenses, and assignments of channels from the Federal Communications Commission as may be necessary to conduct such educational telecommunications programs by standard radio and television broadcast or by other telecommunications technology broadcast systems and to prepare, file, and prosecute before the Federal

Communications Commission all applications, reports, or other documents or requests for authorization of any kind necessary or appropriate to achieve the purposes set forth in the Nebraska Educational Telecommunications Act;

(4) To receive gifts and contributions from public and private sources to be expended in providing educational telecommunications facilities and programs;

(5) To acquire real estate and other property as an agency of the State of Nebraska and to hold and use the same for educational telecommunications purposes;

(6) To contract for the construction, repair, maintenance, and operation of telecommunications facilities;

(7) To contract with common carriers, qualified under the laws of the State of Nebraska, to provide interconnecting channels or satellite facilities in support of radio, television, and other telecommunications technology services unless it is first determined by the Nebraska Educational Telecommunications Commission that state-owned interconnecting channels can be constructed and operated that would furnish a comparable quality of service at a cost to the state that would be less than if such channels were provided by qualified common carriers;

(8) To provide for programming for the visually impaired, other print-handicapped persons, and the deaf and hard of hearing as authorized by the Federal Communications Commission under subsidiary communications authority rules, through contracts with appropriate nonprofit corporations or organizations which have been created for such purpose;

(9) To arrange for the operation of statewide educational telecommunications networks, as directed by the Nebraska Educational Telecommunications Commission, consistent with the provisions of the federal Communications Act of 1934, as amended, and applicable rules and regulations, with policies of the Federal Communications Commission, in cooperation with the State Board of Education insofar as elementary and secondary education programs are concerned, and in cooperation with the Coordinating Commission for Postsecondary Education insofar as postsecondary education programs are concerned;

(10) After taking into consideration the needs of the entire state, to establish and maintain general policies relating to the nature and character of educational telecommunications broadcasts or transmissions;

(11) To review, or cause to be reviewed by a person designated by the commission, all programs presented on the network prior to broadcast or transmission to insure that the programs are suitable for viewing and listening. Such suitability shall be determined by evaluating the content of the program, and screening the programs if necessary, as to their educational value and whether they enhance the cultural appreciation of the viewer and listener and do not appeal to his or her prurient interest. When it is obvious from an examination of the descriptive program materials that a program is suitable for presenting on the network, no further review shall be required;

(12) To cooperate with federal or state agencies for the purpose of obtaining matching federal or state funds and providing educational telecommunications facilities of all types throughout the state and to make such reports as may be required of recipients of matching funds;

(13) To arrange for and provide digital radio and television broadcast and other telecommunications technology transmissions of noncommercial edu-

educational telecommunications programs to Nebraska citizens and institutions, but no tax funds shall be used for program advertising which may only be financed out of funds received from foundations or individual gifts;

(14) To coordinate with Nebraska agencies that deal with telecommunications activities and are supported in whole or in part by public funds;

(15) To adopt bylaws for the conduct of its affairs;

(16) To make certain that the facilities are not used for any purpose which is contrary to the United States Constitution or the Constitution of Nebraska or for broadcasting propaganda or attempting to influence legislation;

(17) To publish such informational material as it deems necessary and it may, at its discretion, charge appropriate fees therefor. The proceeds of all such fees shall be remitted to the State Treasurer for credit to the State Educational Telecommunications Fund and shall be used by the commission solely for publishing such informational material. The commission shall provide to newspapers, radio stations, and other news media program schedules informing the public of programs approved by the commission; and

(18) To maintain a digital archive of programs and educational content containing stories, events, individuals, and performances which are significant or prominent in Nebraska history.

**Source:** Laws 1963, c. 468, § 3, p. 1497; Laws 1965, c. 535, § 2, p. 1682; Laws 1969, c. 743, § 1, p. 2799; Laws 1969, c. 744, § 1, p. 2802; Laws 1969, c. 742, § 2, p. 2796; Laws 1974, LB 306, § 1; Laws 1984, LB 645, § 4; Laws 1986, LB 461, § 2; R.S.1943, (1994), § 79-2103; Laws 1996, LB 900, § 972; Laws 1997, LB 347, § 53; Laws 2000, LB 1328, § 1; Laws 2011, LB331, § 1; Laws 2014, LB692, § 4.

Effective date July 18, 2014.

**79-1317 Educational telecommunications; commission; establish fees.**

The Nebraska Educational Telecommunications Commission, in consultation with users of its telecommunications facilities, networks, and equipment, may establish user fees, penalty fees, or other fees as necessary for and consistent with the efficient and orderly use of its facilities, networks, and equipment.

**Source:** Laws 1995, LB 89, § 2; R.S.Supp.,1995, § 79-2103.01; Laws 1996, LB 900, § 973; Laws 2014, LB692, § 5.

Effective date July 18, 2014.

**79-1318 Educational telecommunications; commission; instrumentality of state; may sue and be sued.**

The Nebraska Educational Telecommunications Commission is hereby constituted an instrumentality of the State of Nebraska and may sue and be sued by the name Nebraska Educational Telecommunications Commission.

**Source:** Laws 1963, c. 468, § 4, p. 1499; Laws 1984, LB 645, § 5; R.S.1943, (1994), § 79-2104; Laws 1996, LB 900, § 974.

**79-1319 Educational telecommunications; operation on noncommercial basis; exceptions; service available to all schools and colleges; costs.**

All telecommunications facilities operated or supervised by the Nebraska Educational Telecommunications Commission shall be operated at all times on

a noncommercial basis, except that revenue may be generated from other nonprofit or commercial sources through contractual arrangements involving excess transmission spectrum or transmission and production facilities. All contractual arrangements shall be based on sound business principles that are made in the best interest of the State of Nebraska. The commission may also enter into partnerships with public or private entities for the purpose of jointly building and operating tower and other transmission structures. All telecommunications facilities operated or supervised by the commission shall not produce or be involved in the production of commercials and shall not be involved in the distribution or retransmission of national commercial and subscription television channels.

Operational and administrative service pertinent to the production and utilization of educational telecommunications services shall be made available to all schools and colleges of Nebraska on the basis of the actual cost of production exclusive of general overhead expense.

**Source:** Laws 1963, c. 468, § 5, p. 1499; Laws 1984, LB 645, § 6; R.S.1943, (1994), § 79-2105; Laws 1996, LB 900, § 975; Laws 1996, LB 1138, § 1; Laws 1999, LB 860, § 1; Laws 2006, LB 1208, § 24; Laws 2014, LB692, § 6.  
Effective date July 18, 2014.

**79-1320 State Educational Telecommunications Fund; created; use; investment.**

The State Educational Telecommunications Fund is created. The fund shall be used by the Nebraska Educational Telecommunications Commission for the purposes of carrying out the provisions of the Nebraska Educational Telecommunications Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Educational Telecommunications Fund shall consist of such sums as the Legislature may appropriate. 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 1963, c. 467, § 1, p. 1496; Laws 1969, c. 584, § 91, p. 2402; Laws 1984, LB 645, § 8; Laws 1995, LB 7, § 92; R.S.Supp.,1995, § 79-2107; Laws 1996, LB 900, § 976; Laws 2009, First Spec. Sess., LB3, § 60.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-1321 Repealed. Laws 2014, LB 692, § 8.**

**79-1322 Commission; power of eminent domain; purpose.**

Subject to the approval of the Legislature and, if the Legislature is not in session, the Executive Board of the Legislative Council, the Nebraska Educational Telecommunications Commission is authorized and empowered to acquire in the name of the State of Nebraska real estate by the use of eminent domain as provided in sections 72-213 to 72-222 for the following purposes:

- (1) For transmitter buildings and tower sites with access roads;
- (2) For guy anchors for towers; and

(3) For transmission and reception facilities of telecommunications technology distribution systems.

**Source:** Laws 1965, c. 535, § 1, p. 1680; Laws 1969, c. 745, § 1, p. 2805; Laws 1984, LB 645, § 9; Laws 1986, LB 461, § 4; R.S.1943, (1994), § 79-2109; Laws 1996, LB 900, § 978; Laws 1997, LB 347, § 54.

**79-1323 Repealed. Laws 2014, LB 692, § 8.**

**79-1324 Repealed. Laws 2014, LB 692, § 8.**

**79-1325 Repealed. Laws 2014, LB 692, § 8.**

**79-1326 Repealed. Laws 2002, LB 93, § 27.**

**79-1327 Repealed. Laws 2002, LB 93, § 27.**

(c) DISTANCE EDUCATION

**79-1328 Repealed. Laws 2006, LB 1208, § 32.**

**79-1329 Repealed. Laws 2006, LB 1208, § 32.**

**79-1330 Repealed. Laws 2006, LB 1208, § 32.**

**79-1331 Repealed. Laws 2010, LB 1071, § 48.**

**79-1332 Repealed. Laws 2007, LB 603, § 39.**

**79-1333 Repealed. Laws 2007, LB 603, § 39.**

**79-1334 Transferred to section 79-1248.**

**79-1335 Transferred to section 79-1249.**

**79-1336 Distance education equipment reimbursement; application; contents; repayment; when; department decisions; appeal.**

(1) For fiscal years 2007-08 through 2013-14, the State Department of Education shall provide distance education equipment reimbursement to school districts and educational service units from the Education Innovation Fund as provided in this section. Such reimbursements shall be for hardware or software purchased either by, or on behalf of, the school district or educational service unit seeking reimbursement after July 14, 2006, for use in distance education and shall be limited to a total through fiscal year 2013-14 of twenty thousand dollars multiplied by the number of high school buildings for each school district and twenty thousand dollars for each educational service unit office with a distance education classroom, except that no educational service unit shall count more than one office with a distance education classroom for each four thousand square miles within the boundaries of the educational service unit. If a school district has one or more former high school buildings that are no longer being used as high school buildings due to a school district merger and such buildings have distance education classrooms at the time of application, such buildings shall be deemed high school buildings for the purposes of this subsection. The reimbursements may include installation costs for such hardware or software. To qualify for distance education equipment

reimbursement, the school district or the educational service unit shall access Network Nebraska prior to the application for reimbursement. Applications for distance education equipment reimbursement shall be submitted on or before July 1, 2013, for reimbursements to be made in fiscal year 2013-14 on a form specified by the department and shall include:

(a) A description of the hardware or software purchased and how the hardware or software will be used for distance education;

(b) Copies of receipts for the purchases to be reimbursed;

(c) For purchases made on behalf of a school district or educational service unit, evidence that such purchase was made on behalf of such school district or educational service unit and that such school district or educational service unit paid directly or indirectly for such purchase; and

(d) For school districts, a commitment to either send or receive two-way interactive video distance education courses through the Educational Service Unit Coordinating Council each semester, or the equivalent of two semester courses each year, for four consecutive years and to apply for distance education incentives pursuant to section 79-1337 or to provide any other evidence required by the department to show that the commitment was met.

(2) On or before August 1 of each year, the department shall certify the reimbursements to be paid to each school district or educational service unit on or before September 1 of each year.

(3) The department shall use the applications for distance education incentives submitted pursuant to section 79-1337 and any other information requested by the department pursuant to rules and regulations of the department to verify that each school district that received a reimbursement completes the commitment to either send or receive two-way interactive video distance education courses through the council for four years. Any school district failing to complete such commitment shall repay the Education Innovation Fund for the amount of any reimbursements received pursuant to this section. On or before September 1 of each year, the department shall notify any school district failing to complete the commitment for the prior school year that repayment of the reimbursement is required and the amount of such repayment. Repayments shall be due on or before the immediately following December 31. Late repayments shall accrue interest at the rate prescribed in section 45-104.02 from the date of the initial reimbursement.

(4) On or before October 1 of each year, a school district or educational service unit may appeal the denial of reimbursements or a school district may appeal the requirement to repay reimbursements to the State Board of Education. The board shall allow a representative of the school district or educational service unit an opportunity to present information concerning the appeal to the board at the November board meeting. If the board finds that the department denied the reimbursement in error, the department shall pay the district or educational service unit from the Education Innovation Fund as soon as practical the amount which was denied in error. If the board finds that the department erred in notifying a school district that a reimbursement is required to be repaid, such notification shall be void.

(5) The State Board of Education shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2006, LB 1208, § 22; Laws 2007, LB603, § 29; Laws 2008, LB988, § 52; Laws 2013, LB410, § 14.

**79-1337 Distance education incentives; application; contents; calculation of incentives; denial of incentives; appeal.**

(1) For fiscal years 2007-08 through 2015-16, the State Department of Education shall provide distance education incentives from the Education Innovation Fund to school districts and educational service units for qualified distance education courses coordinated through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, as provided in this section.

(2) School districts and educational service units shall apply for incentives annually through calendar year 2015 to the department on or before August 1 on a form specified by the department. The application shall:

(a) For school districts, specify (i) the qualified distance education courses which were received by students in the membership of the district in the then-current school fiscal year and which were not taught by a teacher employed by the school district and (ii) for each such course (A) the number of students in the membership of the district who received the course, (B) the educational entity employing the teacher, and (C) whether the course was a two-way interactive video distance education course; and

(b) For school districts and educational service units, specify (i) the qualified distance education courses which were received by students in the membership of another educational entity in the then-current school fiscal year and which were taught by a teacher employed by the school district or educational service unit, (ii) for each such course for school districts, the number of students in the membership of the district who received the course, and (iii) for each such course (A) the other educational entities in which students received the course and how many students received the course at such educational entities, (B) any school district that is sparse or very sparse as such terms are defined in section 79-1003 that had at least one student in the membership who received the course, and (C) whether the course was a two-way interactive video distance education course.

(3) On or before September 1 of each year through calendar year 2015, the department shall certify the incentives for each school district and educational service unit which shall be paid on or before October 1 of such year. The incentives for each district shall be calculated as follows:

(a) Each district shall receive distance education units for each qualified distance education course as follows:

(i) One distance education unit for each qualified distance education course received as reported pursuant to subdivision (2)(a) of this section if the course was a two-way interactive video distance education course;

(ii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was not received by at least one student who was in the membership of another school district which was sparse or very sparse;

(iii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was sparse or very sparse, but the course was not a two-way interactive video distance education course; and

(iv) Two distance education units for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was sparse or very sparse and the course was a two-way interactive video distance education course;

(b) The difference of the amount available for distribution in the Education Innovation Fund on the August 1 when the applications were due minus any amount to be paid to school districts pursuant to section 79-1336 shall be divided by the number of distance education units to determine the incentive per distance education unit, except that the incentive per distance education unit shall not equal an amount greater than one thousand dollars; and

(c) The incentives for each school district shall equal the number of distance education units calculated for the school district multiplied by the incentive per distance education unit.

(4) If there are additional funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section, school districts and educational service units may qualify for additional incentives for elementary distance education courses. Such incentives shall be calculated for sending and receiving school districts and educational service units as follows:

(a) The per-hour incentives shall equal the funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section divided by the sum of the hours of elementary distance education courses sent or received for each school district and educational service unit submitting an application, except that the per-hour incentives shall not be greater than ten dollars; and

(b) The elementary distance education incentives for each school district and educational service unit shall equal the per-hour incentive multiplied by the hours of elementary distance education courses sent or received by the school district or educational service unit.

(5) The department may verify any or all application information using annual curriculum reports and may request such verification from the council.

(6) On or before October 1 of each year through calendar year 2015, a school district or educational service unit may appeal the denial of incentives for any course by the department to the State Board of Education. The board shall allow a representative of the school district or educational service unit an opportunity to present information concerning the appeal to the board at the November board meeting. If the board finds that the course meets the requirements of this section, the department shall pay the district from the Education Innovation Fund as soon as practical in an amount for which the district or educational service unit should have qualified based on the incentive per distance education unit used in the original certification of incentives pursuant to this section.

(7) The State Board of Education shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2006, LB 1208, § 23; Laws 2007, LB603, § 30; Laws 2008, LB988, § 53; Laws 2014, LB967, § 23.  
Effective date April 3, 2014.

## ARTICLE 14

## FEDERATION OF SCHOOL DISTRICTS

## Section

- 79-1401. Repealed. Laws 1997, LB 347, § 59.
- 79-1402. Repealed. Laws 1997, LB 347, § 59.
- 79-1403. Repealed. Laws 1997, LB 347, § 59.
- 79-1404. Repealed. Laws 1997, LB 347, § 59.
- 79-1405. Repealed. Laws 1997, LB 347, § 59.
- 79-1406. Repealed. Laws 1997, LB 347, § 59.
- 79-1407. Repealed. Laws 1997, LB 347, § 59.
- 79-1408. Repealed. Laws 1997, LB 347, § 59.
- 79-1409. Repealed. Laws 1997, LB 347, § 59.
- 79-1410. Repealed. Laws 1997, LB 347, § 59.
- 79-1411. Repealed. Laws 1997, LB 347, § 59.
- 79-1412. Repealed. Laws 1997, LB 347, § 59.
- 79-1413. Repealed. Laws 1997, LB 347, § 59.
- 79-1414. Repealed. Laws 1997, LB 347, § 59.
- 79-1415. Repealed. Laws 1997, LB 347, § 59.
- 79-1416. Repealed. Laws 1997, LB 347, § 59.

**79-1401 Repealed. Laws 1997, LB 347, § 59.**

**79-1402 Repealed. Laws 1997, LB 347, § 59.**

**79-1403 Repealed. Laws 1997, LB 347, § 59.**

**79-1404 Repealed. Laws 1997, LB 347, § 59.**

**79-1405 Repealed. Laws 1997, LB 347, § 59.**

**79-1406 Repealed. Laws 1997, LB 347, § 59.**

**79-1407 Repealed. Laws 1997, LB 347, § 59.**

**79-1408 Repealed. Laws 1997, LB 347, § 59.**

**79-1409 Repealed. Laws 1997, LB 347, § 59.**

**79-1410 Repealed. Laws 1997, LB 347, § 59.**

**79-1411 Repealed. Laws 1997, LB 347, § 59.**

**79-1412 Repealed. Laws 1997, LB 347, § 59.**

**79-1413 Repealed. Laws 1997, LB 347, § 59.**

**79-1414 Repealed. Laws 1997, LB 347, § 59.**

**79-1415 Repealed. Laws 1997, LB 347, § 59.**

**79-1416 Repealed. Laws 1997, LB 347, § 59.**

## ARTICLE 15

## COMPACT FOR EDUCATION

## Section

- 79-1501. Compact; contents.
- 79-1502. Repealed. Laws 2000, LB 1135, § 34.
- 79-1503. Education Commission of the States; bylaws; file.

Section

79-1504. Education Commission of the States; members; selection.

**79-1501 Compact; contents.**

The Compact for Education is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

**COMPACT FOR EDUCATION**

**Article I. Purpose and Policy.**

**SECTION A.** It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the State and local levels.
2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the Nation, so that the executive and legislative branches of State government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
4. Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

**SECTION B.** It is the policy of this compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

**SECTION C.** The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the Nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

**Article II. State Defined.**

As used in this Compact, "State" means a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

**Article III. The Commission.**

**SECTION A.** The Education Commission of the States, hereinafter called "the Commission," is hereby established. The Commission shall consist of seven members representing each party State. One of such members shall be the Governor; two shall be members of the State legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. If the laws of a State prevent legislators from serving on the Commission, six members shall be appointed and serve at

the pleasure of the Governor, unless the laws of the State otherwise provide. In addition to any other principles or requirements which a State may establish for the appointment and service of its members of the Commission, the guiding principle for the composition of the membership on the Commission from each party State shall be that the members representing such State shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the State Government, higher education, the State education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the Commission representing the party States, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

SECTION B. The members of the Commission shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the Commissioners are present. The Commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Commission may delegate the exercise of any of its powers to the steering committee or the Executive Director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (j).

SECTION C. The Commission shall have a seal.

SECTION D. The Commission shall elect annually, from among its members, a chairman, who shall be a Governor, a vice chairman and a treasurer. The Commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the Commission, and together with the treasurer and such other personnel as the Commission may deem appropriate shall be bonded in such amount as the Commission shall determine. The executive director shall be secretary.

SECTION E. Irrespective of the civil service, personnel or other merit system laws of any of the party States, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Commission, and shall fix the duties and compensation of such personnel. The Commission in its bylaws shall provide for the personnel policies and programs of the Commission.

SECTION F. The Commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

SECTION G. The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize

and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

SECTION H. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

SECTION I. The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Party States.

SECTION J. The Commission annually shall make to the Governor and legislature of each party State a report covering the activities of the Commission for the preceding year. The Commission may make such additional reports as it may deem desirable.

#### Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the compact, the Commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.
2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.
3. Develop proposals for adequate financing of education as a whole and at each of its many levels.
4. Conduct or participate in research of the types referred to in this Article in any instance where the Commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.
5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.
6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

#### Article V. Cooperation With Federal Government.

SECTION A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to Federal law, and may be drawn from any one or more branches of the Federal Government, but no such representatives shall have a vote on the Commission.

SECTION B. The Commission may provide information and make recommendations to any executive or legislative agency or officer of the Federal Government concerning the common educational policies of the States, and may advise with any such agencies or officers concerning any matter of mutual interest.

#### Article VI. Committees.

SECTION A. To assist in the expeditious conduct of its business when the full Commission is not meeting, the Commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the Commission, shall be constituted and function as provided in the bylaws of the Commission. One-fourth of the voting membership of the steering committee shall consist of Governors, one-fourth shall consist of Legislators, and the remainder shall consist of other members of the Commission. A Federal representative on the Commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the Commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the Commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the Commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

SECTION B. The Commission may establish advisory and technical committees composed of State, local, and Federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the States concerned, be established to consider any matter of special concern to two or more of the party States.

SECTION C. The Commission may establish such additional committees as its bylaws may provide.

#### Article VII. Finance.

SECTION A. The Commission shall advise the Governor or designated officer or officers of each party State of its budget and estimated expenditures for such period as may be required by the laws of that party State. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States.

SECTION B. The total amount of appropriation requests under any budget shall be apportioned among the party States. In making such apportionment, the Commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party States.

SECTION C. The Commission shall not pledge the credit of any party States. The Commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (g) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the

Commission makes use of funds available to it pursuant to Article III (g) thereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

SECTION D. 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 by its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the Commission.

SECTION E. The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

SECTION F. Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### Article VIII. Eligible Parties; Entry Into and Withdrawal.

SECTION A. This compact shall have as eligible parties all States, Territories, and Possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

SECTION B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

SECTION C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his State a party only until December 31, 1967. During any period when a State is participating in this compact through gubernatorial action, the Governor shall appoint those persons who, in addition to himself, shall serve as the members of the Commission from his State, and shall provide to the Commission an equitable share of the financial support of the Commission from any source available to him.

SECTION D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this Article, any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

#### Article IX. Construction and Severability.

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 State or of the United States, or the application 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 participating therein, the compact shall remain in full force and effect as to the State affected as to all severable matters.

**Source:** Laws 1967, c. 516, § 1, p. 1728; R.S.1943, (1994), § 79-2501; Laws 1996, LB 900, § 1000.

**79-1502 Repealed. Laws 2000, LB 1135, § 34.**

**79-1503 Education Commission of the States; bylaws; file.**

Pursuant to Article III (i) of the Compact for Education, the Education Commission of the States shall file a copy of its bylaws and any amendment thereto with the Governor.

**Source:** Laws 1967, c. 516, § 3, p. 1737; R.S.1943, (1994), § 79-2503; Laws 1996, LB 900, § 1002.

**79-1504 Education Commission of the States; members; selection.**

The provisions of Article III, SECTION A., of the Compact for Education notwithstanding, the members of the Education Commission of the States representing this state shall consist of the Governor, three members of the Legislature selected by the Executive Board of the Legislative Council, and three members appointed by the Governor. Of the three members appointed by the Governor, one member shall be a member of a school board or board of education of a Class II, III, IV, V, or VI school district or an appointed representative of a state association of school boards or boards of education representing such districts.

**Source:** Laws 1967, c. 516, § 4, p. 1737; Laws 1987, LB 199, § 1; R.S.1943, (1994), § 79-2504; Laws 1996, LB 900, § 1003.

**ARTICLE 16**

**PRIVATE, DENOMINATIONAL, OR PAROCHIAL SCHOOLS**

**Cross References**

**Constitutional provisions:**

English as official state language, see Article I, section 27, Constitution of Nebraska.

State day, observance in private schools, see section 84-107.

Textbook loan program, see section 79-734.

Transportation of students by public school transportation facilities, see section 79-601.

Water furnished free by cities of metropolitan class, see section 14-2127.

**Section**

- 79-1601. Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.
- 79-1602. Providing false information; penalty.
- 79-1603. Private, denominational, or parochial schools; religious instruction; sections, how construed.
- 79-1604. Private, denominational, or parochial schools; management and control.
- 79-1605. Private, denominational, or parochial schools; inspection by public school official; when required.
- 79-1606. Private, denominational, or parochial schools; nonconformity with school law; penalty.
- 79-1607. Violations; penalty.

**79-1601 Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.**

(1) Except as provided in subsections (2) through (6) of this section, all private, denominational, and parochial schools in the State of Nebraska and all teachers employed or giving instruction in such schools shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of students. All private, denominational, and parochial schools shall have adequate equipment and supplies, shall be graded the same, and shall have courses of study for each grade conducted in such schools substantially the same as those given in the public schools which the students would attend in the absence of such private, denominational, or parochial schools.

(2) All private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in section 79-318 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in section 79-318 and subsections (2) through (6) of this section. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of this section, not to meet state accreditation or approval requirements shall be based upon evidence that such schools offer a program of instruction leading to the acquisition of basic skills in the language arts, mathematics, science, social studies, and health. Such rules and regulations may include a provision for the visitation of such schools and regular achievement testing of students attending such schools in order to insure that such schools are offering instruction in the basic skills listed in this subsection. Any arrangements for visitation or testing shall be made through a parent representative of each such school. The results of such testing may be used as evidence that such schools are offering instruction in such basic skills but shall not be used to measure, compare, or evaluate the competency of students at such schools.

(3) The provisions of subsections (3) through (6) of this section shall apply to any private, denominational, or parochial school in the State of Nebraska which elects not to meet state accreditation or approval requirements. Elections pursuant to such subsections shall be effective when a statement is received by the Commissioner of Education signed by the parents or legal guardians of all students attending such private, denominational, or parochial school, stating that (a) either specifically (i) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education violate sincerely held religious beliefs of the parents or legal guardians or (ii) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education interfere with the decisions of the parents or legal guardians in directing the student's education, (b) an authorized representative of such parents or legal guardians will at least annually submit to the Commissioner of Education the information necessary to prove that the requirements of subdivisions (4)(a) through (c) of this section are satisfied, (c) the school offers the courses of instruction required by subsections (2), (3), and (4) of this section, and (d) the parents or legal guardians have

satisfied themselves that individuals monitoring instruction at such school are qualified to monitor instruction in the basic skills as required by subsections (2), (3), and (4) of this section and that such individuals have demonstrated an alternative competency to monitor instruction or supervise students pursuant to subsections (3) through (6) of this section.

(4) Each such private, denominational, or parochial school shall (a) meet minimum requirements relating to health, fire, and safety standards prescribed by state law and the rules and regulations of the State Fire Marshal, (b) report attendance pursuant to section 79-201, (c) maintain a sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health, and (d) comply with the immunization requirements in section 79-217 if the statement signed by the parents or legal guardians indicate a nonreligious reason pursuant to subdivision (3)(a)(ii) of this section for the student attending a private, denominational, or parochial school which elects not to meet state accreditation or approval requirements. The State Board of Education shall establish procedures for receiving information and reports required by subsections (3) through (6) of this section from authorized parent representatives who may act as agents for parents or legal guardians of students attending such school and for individuals monitoring instruction in the basic skills required by subsections (2), (3), and (4) of this section.

(5) Individuals employed or utilized by schools which elect not to meet state accreditation or approval requirements shall not be required to meet the certification requirements prescribed in sections 79-801 to 79-815 but shall either (a) take appropriate subject matter components of a nationally recognized teacher competency examination designated by the State Board of Education as (i) including the appropriate subject matter areas for purposes of satisfying the requirements of subsections (3) and (4) of this section and (ii) a nationally recognized examination or (b) offer evidence of competence to provide instruction in the basic skills required by subsections (3) and (4) of this section pursuant to informal methods of evaluation which shall be developed by the State Board of Education. Such evidence may include educational transcripts, diplomas, and other information regarding the formal educational background of such individuals. Information concerning test results, transcripts, diplomas, and other evidence of formal education may be transmitted to the State Department of Education by authorized representatives of parents or legal guardians. The results of such testing or alternative evaluation of individuals who monitor the instruction of students attending such schools may be used as evidence of whether or not such schools are offering adequate instruction in the basic skills prescribed in subsections (2), (3), and (4) of this section but shall not be used to prohibit any such school from employing such individuals. Failure of a monitor, who is tested for the purpose of satisfying in whole or in part the requirements of subsections (3) through (6) of this section, to attain a score equal to or exceeding both the state or national average score or rating on appropriate subject matter components of recognized teacher competency examinations designated by the State Board of Education may be by itself sufficient proof that such school does not offer adequate instruction in the basic skills prescribed in subsections (3) and (4) of this section.

(6) The demonstration of competency to monitor instruction in a private, denominational, or parochial school which has elected not to meet state accreditation or approval requirements shall in no way constitute or be con-

strued to grant a license, permit, or certificate to teach in the State of Nebraska. Any school which elects not to meet state accreditation or approval requirements and does not meet the requirements of subsections (2) through (6) of this section shall not be deemed a school for purposes of section 79-201, and the parents or legal guardians of any students attending such school shall be subject to prosecution pursuant to such section or any statutes relating to habitual truancy.

**Source:** Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(h), p. 230; C.S.1922, § 6508f; C.S.1929, § 79-1906; R.S.1943, § 79-1913; Laws 1949, c. 256, § 506, p. 864; Laws 1984, LB 928, § 3; R.S.1943, (1994), § 79-1701; Laws 1996, LB 900, § 1004; Laws 1999, LB 268, § 1; Laws 1999, LB 813, § 55; Laws 2003, LB 685, § 25; Laws 2009, LB549, § 49.

#### Cross References

**Admission to public college or university**, see section 85-607.

**Identification of students, home school duties**, see section 43-2007.

**Religious beliefs**, conflict with required immunizations, see section 79-221.

**Sales and use tax exemption**, see section 77-2704.12.

**Student transfer**, access to student files or records, see section 79-2,105.

Requirement of minimal school standards did not infringe upon constitutional rights of parents of school children. Meyer-korth v. State, 173 Neb. 889, 115 N.W.2d 585 (1962).

### 79-1602 Providing false information; penalty.

Any person who, as an authorized representative of a parent or legal guardian, transmits information required by subsections (3) through (6) of section 79-1601 knowing such information to be false shall be guilty of a Class IIIA misdemeanor.

Any person who knowingly gives false information to an authorized representative of a parent or legal guardian, knowing that such information is intended to be transmitted to the State Board of Education, shall be guilty of a Class IIIA misdemeanor.

**Source:** Laws 1984, LB 928, § 4; R.S.1943, (1994), § 79-1701.01; Laws 1996, LB 900, § 1005; Laws 1999, LB 813, § 56.

### 79-1603 Private, denominational, or parochial schools; religious instruction; sections, how construed.

Nothing contained in sections 79-1601 to 79-1607 shall be so construed as to interfere with religious instruction in any private, denominational, or parochial school.

**Source:** Laws 1919, c. 155, § 3, p. 349; Laws 1921, c. 53, § 1(j), p. 230; C.S.1922, § 6508h; C.S.1929, § 79-1908; R.S.1943, § 79-1915; Laws 1949, c. 256, § 508, p. 864; R.S.1943, (1994), § 79-1703; Laws 1996, LB 900, § 1006.

### 79-1604 Private, denominational, or parochial schools; management and control.

For the purposes of sections 79-1601 to 79-1607, the owner or governing board of any private, denominational, or parochial school shall have authority to select and purchase textbooks, equipment, and supplies, to employ teachers,

and to have and exercise the general management of the school, subject to the provisions of such sections.

**Source:** Laws 1919, c. 155, § 4, p. 349; Laws 1921, c. 53, § 1(k), p. 230; C.S.1922, § 6508i; C.S.1929, § 79-1909; R.S.1943, § 79-1916; Laws 1949, c. 256, § 509, p. 864; R.S.1943, (1994), § 79-1704; Laws 1996, LB 900, § 1007.

**Cross References**

Textbook loan program, see section 79-734.

**79-1605 Private, denominational, or parochial schools; inspection by public school official; when required.**

The superintendent of the high school district and its affiliated territory in which any private, denominational, or parochial school is located, which school is not otherwise inspected by an area or diocesan representative holding a Nebraska certificate to administer, shall inspect such schools and report to the proper officers any evidence of failure to observe any of the provisions of sections 79-1601 to 79-1607. The Commissioner of Education, when in his or her judgment it is deemed advisable, may appoint a public school official other than such superintendent, including a member of the State Department of Education, for such inspections. Such appointee shall hold a Nebraska certificate to administer. The State Board of Education shall require the superintendents and appointed public school officials to make such inspections at least twice a year, and the school officers of such schools and the teachers giving instruction in such schools shall permit such inspection and assist and cooperate in the making of the same.

**Source:** Laws 1919, c. 155, § 6, p. 349; Laws 1921, c. 53, § 1(m), p. 231; C.S.1922, § 6508k; C.S.1929, § 79-1911; R.S.1943, § 79-1918; Laws 1949, c. 256, § 510, p. 865; Laws 1971, LB 254, § 1; Laws 1973, LB 395, § 1; Laws 1978, LB 441, § 1; R.S.1943, (1994), § 79-1705; Laws 1996, LB 900, § 1008; Laws 1999, LB 272, § 114; Laws 2003, LB 685, § 26.

This section did not violate constitutional provision respecting freedom of religion. *Meyerkorth v. State*, 173 Neb. 889, 115 N.W.2d 585 (1962).

**79-1606 Private, denominational, or parochial schools; nonconformity with school law; penalty.**

In case any private, denominational, or parochial school, after a final determination by the proper authorities under sections 79-1601 to 79-1607, fails, refuses, or neglects to conform to and comply with such sections, no person shall be granted or allowed a certificate to teach in such school and the students attending such school shall be required to attend the public school of the proper district as provided by law in like manner as though there were no such private, denominational, or parochial school. Full credit for certification under the law shall be given all teachers who have taught in private, denominational, or parochial schools the same as though they had taught in public schools.

**Source:** Laws 1919, c. 155, § 7, p. 349; Laws 1921, c. 53, § 1(n), p. 231; C.S.1922, § 6508l; C.S.1929, § 79-1912; R.S.1943, § 79-1919; Laws 1949, c. 256, § 511, p. 865; R.S.1943, (1994), § 79-1706; Laws 1996, LB 900, § 1009; Laws 2009, LB549, § 50.

This section did not violate constitutional provision respecting freedom of religion. Meyerkorth v. State, 173 Neb. 889, 115 N.W.2d 585 (1962).

### **79-1607 Violations; penalty.**

Any person violating any of the provisions of sections 79-1601 to 79-1606 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1919, c. 155, § 8, p. 350; Laws 1921, c. 53, § 1(o), p. 231; C.S.1922, § 6508m; C.S.1929, § 79-1913; R.S.1943, § 79-1920; Laws 1949, c. 256, § 512, p. 865; Laws 1977, LB 39, § 261; R.S.1943, (1994), § 79-1707; Laws 1996, LB 900, § 1010.

The fact that conduct is subject to the criminal penalties under these sections does not proscribe granting of injunctive relief. State ex rel. Douglas v. Bigelow, 214 Neb. 464, 334 N.W.2d 444 (1983).

The provision for penal sanctions in the event of violations of the various statutory provisions relating to compulsory edu-

cation and operation of private, denominational, and parochial schools does not foreclose the possibility of injunctive relief. State ex rel. Douglas v. Faith Baptist Church of Louisville, 207 Neb. 802, 301 N.W.2d 571 (1981).

## **ARTICLE 17**

### **STATUTORY CONSTRUCTION**

#### Section

79-1701. Acts, proceedings, and appropriations; validation.

79-1702. Legislative intent; recodification.

79-1703. Rules and regulations; internal references; how construed.

### **79-1701 Acts, proceedings, and appropriations; validation.**

Any acts and proceedings undertaken or funds appropriated in accordance with and pursuant to Laws 1991, LB 511, and prior to April 16, 1992, are hereby deemed undertaken pursuant to Laws 1992, LB 245, legalized, and validated if in compliance with Laws 1991, LB 511.

**Source:** Laws 1992, LB 245, § 96; R.S.1943, (1994), § 79-4,240; Laws 1996, LB 900, § 1011.

### **79-1702 Legislative intent; recodification.**

It is the intent of the Legislature that the provisions of sections 79-101 to 79-1703 constitute a recodification of Chapter 79 of the Revised Statutes of Nebraska. The purpose of Laws 1996, LB 900, is to reorganize the laws within Chapter 79 and to modernize terminology. Sections 79-101 to 79-1703 should not be construed to change the meaning, intent, application, or effect of any provision in Chapter 79 as such existed prior to July 19, 1996. Article names and part names printed in Laws 1996, LB 900, are for informational purposes only and are not part of the law.

**Source:** Laws 1996, LB 900, § 1012.

### **79-1703 Rules and regulations; internal references; how construed.**

Any reference to a Chapter 79 section number contained in rules and regulations adopted and promulgated prior to July 19, 1996, shall be deemed to refer to the section in Laws 1996, LB 900, containing the referenced provisions without requiring any revision of the rules or regulations, regardless of the section number assigned to such section as part of the codification process.

**Source:** Laws 1996, LB 900, § 1013.

## ARTICLE 18

NEBRASKA ELEMENTARY AND SECONDARY  
SCHOOL FINANCE AUTHORITY ACT

## Section

- 79-1801. Act, how cited.  
79-1802. Legislative findings.  
79-1803. Definitions, where found.  
79-1804. Authority, defined.  
79-1805. Bonds, defined.  
79-1806. Cost, defined.  
79-1807. Elementary or secondary school, defined.  
79-1808. Project, defined.  
79-1809. Property, defined.  
79-1810. Nebraska Elementary and Secondary School Finance Authority; created.  
79-1811. Authority; members; qualifications; appointment; terms; removal.  
79-1812. Authority; officers; executive director; compensation; receive contributions.  
79-1813. Authority; keep records and accounts; seal; certified copies.  
79-1814. Authority; quorum; actions; vacancy; effect.  
79-1815. Authority; officers, members, and employees; surety bond requirements.  
79-1816. Authority; members; expenses.  
79-1817. Authority; member or employee; conflict of interest; abstention.  
79-1818. Authority; purpose.  
79-1819. Authority; perpetual succession; bylaws.  
79-1820. Authority; adopt seal.  
79-1821. Authority; office; location.  
79-1822. Authority; sue and be sued.  
79-1823. Authority; powers over project.  
79-1824. Authority; issuance of bonds authorized.  
79-1825. Authority; charge for services.  
79-1826. Authority; rules and regulations for use of project; designate agent.  
79-1827. Authority; personnel.  
79-1828. Authority; receive loans, grants, and contributions.  
79-1829. Authority; mortgage of certain property.  
79-1830. Authority; loans authorized; limitation.  
79-1831. Authority; make loans; issue bonds; conditions.  
79-1832. Authority; administrative costs; apportionment.  
79-1833. Authority; general powers; joint projects.  
79-1834. Authority; combine and substitute projects; bonds; additional series.  
79-1835. Expenses; how paid; liability; limitation.  
79-1836. Authority; acquisition of property.  
79-1837. Authority; financing obligations completed; convey title.  
79-1838. Authority; bonds; issuance; form; proceeds; how used; replacement; liability.  
79-1839. Bond issuance; resolution; provisions enumerated.  
79-1840. Bonds; secured by trust agreement; contents; expenses; how treated.  
79-1841. Bonds issued to purchase securities of elementary or secondary school; provisions applicable.  
79-1842. Refunding bonds; issuance authorized; provisions applicable.  
79-1843. Bond issuance; state or political subdivision; no obligation; statement; expenses.  
79-1844. Authority; charge rents; lease facilities.  
79-1845. Money received by authority; deemed trust funds; investment.  
79-1846. Bondholders and trustee; enforcement of rights.  
79-1847. Act, how construed.  
79-1848. Authority; journal; public records.  
79-1849. Authority; public purpose; exemptions from taxation.  
79-1850. Bondholders; pledge; agreement of the state.  
79-1851. Act; supplemental to other laws.  
79-1852. Act; provisions controlling.

**79-1801 Act, how cited.**

Sections 79-1801 to 79-1852 shall be known and may be cited as the Nebraska Elementary and Secondary School Finance Authority Act.

**Source:** Laws 1997, LB 809, § 1.

**79-1802 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 elementary and secondary schools 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 Elementary and Secondary School Finance Authority Act to provide a measure of assistance and an alternative method of enabling elementary and secondary schools 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 September 13, 1997; and

(4) The financing and refinancing of educational facilities, through means other than the appropriation of public funds to elementary and secondary schools, as described in the act, is a valid public purpose.

**Source:** Laws 1997, LB 809, § 2.

**79-1803 Definitions, where found.**

For purposes of the Nebraska Elementary and Secondary School Finance Authority Act, unless the context otherwise requires, the definitions found in sections 79-1804 to 79-1809 apply.

**Source:** Laws 1997, LB 809, § 3.

**79-1804 Authority, defined.**

Authority means the Nebraska Elementary and Secondary School Finance Authority created by the Nebraska Elementary and Secondary School 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 1997, LB 809, § 4.

**79-1805 Bonds, defined.**

Bonds means bonds, notes, or other obligations of the authority issued under the Nebraska Elementary and Secondary School Finance Authority Act, including refunding bonds, notwithstanding that the same may be secured by the full

faith and credit of an elementary or secondary school or any other lawfully pledged security of an elementary or secondary school.

**Source:** Laws 1997, LB 809, § 5.

**79-1806 Cost, defined.**

Cost as applied to a project or any portion thereof financed under the Nebraska Elementary and Secondary School Finance Authority Act means all or any part of the cost of any capital expenditure by an elementary or secondary school, including, but not limited to, 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 1997, LB 809, § 6.

**79-1807 Elementary or secondary school, defined.**

Elementary or secondary school means 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 which:

- (1) Is for any or all of the grades kindergarten through twelfth grade;
- (2) Is approved or accredited by the State Department of Education; and
- (3) Does not discriminate in the admission of students on the basis of race, color, creed, national origin, ancestry, age, sex, or handicap, except that nothing in the Nebraska Elementary and Secondary School Finance Authority Act shall be construed or interpreted to prohibit the authority from financing a project for any elementary or secondary school which admits only students of a single gender.

**Source:** Laws 1997, LB 809, § 7.

**79-1808 Project, defined.**

(1) Project means any property located within the state, constructed or acquired before, on, or after September 13, 1997, 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 an elementary or secondary school, or any combination of the foregoing. Project includes, but is not limited to, an academic facility, administrative 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, theatre, or utility facility.

(2) Project also means and includes 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 elementary or secondary school 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 elementary or secondary school;
- (b) Results in a lesser cost of education to its students; or
- (c) Enables the elementary or secondary school 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 1997, LB 809, § 8.

**79-1809 Property, defined.**

Property means 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 does 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.

**Source:** Laws 1997, LB 809, § 9.

**79-1810 Nebraska Elementary and Secondary School Finance Authority; created.**

There is hereby created a body politic and corporate to be known as the Nebraska Elementary and Secondary School Finance Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by the Nebraska Elementary and Secondary School Finance Authority Act shall be deemed and held to be the performance of an essential public function of the state.

**Source:** Laws 1997, LB 809, § 10.

**79-1811 Authority; members; qualifications; appointment; terms; removal.**

The authority consists of five members, to be appointed by the Governor, who shall be residents of the state, not more than three of whom shall be members of the same political party. The members of the authority first appointed shall serve for terms expiring as follows: Three on December 31, 1998; and two on December 31, 2000, 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 is expressly waived in writing by the accused member. Each member shall be

eligible for reappointment to a successive term but shall be ineligible for three consecutive full terms.

**Source:** Laws 1997, LB 809, § 11.

**79-1812 Authority; officers; executive director; compensation; receive contributions.**

The Governor shall designate one of the members representing the elementary or secondary schools 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. The executive director and the assistant executive director shall receive compensation as fixed by the authority. The authority may receive contributions to fund any of its expenses from private donors, including any one or more of the elementary or secondary schools or an association representing the elementary or secondary schools.

**Source:** Laws 1997, LB 809, § 12.

**79-1813 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 1997, LB 809, § 13.

**79-1814 Authority; quorum; actions; vacancy; effect.**

Three 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 Elementary and Secondary School 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 1997, LB 809, § 14.

**79-1815 Authority; officers, members, and employees; surety bond requirements.**

Before the issuance of any bonds under the Nebraska Elementary and Secondary School 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 1997, LB 809, § 15.

**79-1816 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 1997, LB 809, § 16.

**79-1817 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 1997, LB 809, § 17.

**79-1818 Authority; purpose.**

The purpose of the authority shall be to assist private institutions of elementary and secondary education in the constructing, financing, and refinancing of projects.

**Source:** Laws 1997, LB 809, § 18.

**79-1819 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 1997, LB 809, § 19.

**79-1820 Authority; adopt seal.**

The authority may adopt an official seal and alter the same at its pleasure.

**Source:** Laws 1997, LB 809, § 20.

**79-1821 Authority; office; location.**

The authority may maintain an office at such place or places within Nebraska as it may designate.

**Source:** Laws 1997, LB 809, § 21.

**79-1822 Authority; sue and be sued.**

The authority may sue and be sued in its own name.

**Source:** Laws 1997, LB 809, § 22.

**79-1823 Authority; powers over project.**

The authority may determine the location and character of any project to be financed or refinanced under the Nebraska Elementary and Secondary School 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 an elementary or secondary school as its agent to determine the location and character of a project undertaken by an elementary or secondary school 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 1997, LB 809, § 23.

**79-1824 Authority; issuance of bonds authorized.**

The authority may issue bonds of the authority for any of its corporate purposes and fund or refund the same pursuant to the Nebraska Elementary and Secondary School Finance Authority Act.

**Source:** Laws 1997, LB 809, § 24.

**79-1825 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 an elementary or secondary school for its students other than to require that such rates, rents, fees, and charges by such school be sufficient to discharge such school's obligation to the authority.

**Source:** Laws 1997, LB 809, § 25.

**79-1826 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 an elementary or secondary school as its

agent to establish rules and regulations for the use of a project undertaken by such elementary or secondary school.

**Source:** Laws 1997, LB 809, § 26.

**79-1827 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 1997, LB 809, § 27.

**79-1828 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 1997, LB 809, § 28.

**79-1829 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 an elementary or secondary school as permitted by the Nebraska Elementary and Secondary School Finance Authority Act.

**Source:** Laws 1997, LB 809, § 29.

**79-1830 Authority; loans authorized; limitation.**

The authority may make loans to any elementary or secondary school for the cost of any project in accordance with an agreement between the authority and such elementary or secondary school except that no such loan shall exceed the total cost of such project as determined by such elementary or secondary school and approved by the authority.

**Source:** Laws 1997, LB 809, § 30.

**79-1831 Authority; make loans; issue bonds; conditions.**

The authority may make loans to an elementary or secondary school and refund or reimburse outstanding obligations, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by such elementary or secondary school whether before, on, or after September 13, 1997, for the cost of a project, including the power to issue bonds and make loans to an elementary or secondary school 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 elementary or secondary school, (2) results in a lesser cost of education, or (3) enables the elementary or secondary

school 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 1997, LB 809, § 31.

**79-1832 Authority; administrative costs; apportionment.**

The authority may charge to and equitably apportion among participating elementary or secondary schools its administrative costs and expenses incurred in the exercise of the powers and duties conferred by the Nebraska Elementary and Secondary School Finance Authority Act.

**Source:** Laws 1997, LB 809, § 32.

**79-1833 Authority; general powers; joint projects.**

The authority may do all things necessary or convenient to carry out the purposes of the Nebraska Elementary and Secondary School Finance Authority Act.

In carrying out the purposes of the act, the authority may undertake a project for two or more elementary or secondary schools jointly, or for any 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 1997, LB 809, § 33.

**79-1834 Authority; combine and substitute projects; bonds; additional series.**

Notwithstanding any other provision contained in the Nebraska Elementary and Secondary School Finance Authority Act, the authority may combine for financing purposes, with the consent of all of the elementary or secondary schools which are involved, the project or projects and some or all future projects of any elementary or secondary school, 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 an elementary or secondary school 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 1997, LB 809, § 34.

**79-1835 Expenses; how paid; liability; limitation.**

All expenses incurred in carrying out the Nebraska Elementary and Secondary School 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 1997, LB 809, § 35.

**79-1836 Authority; acquisition of property.**

The authority is authorized and empowered, directly or by and through an elementary or secondary school, 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 an elementary or secondary school, 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 an elementary or secondary school as its agent.

**Source:** Laws 1997, LB 809, § 36.

**79-1837 Authority; financing obligations completed; convey title.**

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for an elementary or secondary school, 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 of such project or projects to such elementary or secondary school.

**Source:** Laws 1997, LB 809, § 37.

**79-1838 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 paying, refinancing, or reimbursing all or any part of the cost of a project. Except to the extent payable from payments to be made on securities as provided in section 79-1841, 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 elementary or secondary school 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 Elementary and Secondary School Finance Authority Act, 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 section 79-1841 with respect to a pledge of 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 79-1840 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 1997, LB 809, § 38.

**79-1839 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 1997, LB 809, § 39.

**79-1840 Bonds; secured by trust agreement; contents; expenses; how treated.**

In the discretion of the authority, any bonds issued under the Nebraska Elementary and Secondary School 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.

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 a 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 1997, LB 809, § 40.

**79-1841 Bonds issued to purchase securities of elementary or secondary school; provisions applicable.**

In addition to any other methods of financing authorized in the Nebraska Elementary and Secondary School 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 an elementary or secondary school as authorized by section 79-1831 by issuing its bonds for the purpose of purchasing the securities of an elementary or secondary school. 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 elementary or secondary school and approved by the authority. In other respects any such bonds shall be subject to the act, including sections 79-1838 and 79-1839, and the trust agreement creating such bonds may contain any of the provisions set forth in section 79-1840 as the authority may consider appropriate.

If a project is financed pursuant to this section, the title to such project shall remain in the elementary or secondary school 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 elementary or secondary school.

Section 79-1837 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 elementary or secondary

school 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 trust agreement.

**Source:** Laws 1997, LB 809, § 41.

**79-1842 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 Elementary and Secondary School 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 79-1838 and 79-1841. 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 elementary or secondary school 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 1997, LB 809, § 42.

**79-1843 Bond issuance; state or political subdivision; no obligation; statement; expenses.**

Bonds issued pursuant to the Nebraska Elementary and Secondary School 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 1997, LB 809, § 43.

**79-1844 Authority; charge rents; lease facilities.**

Except for projects financed pursuant to section 79-1841, the authority shall fix, revise, charge, and collect rents for the use of each project and contract with any elementary or secondary school in respect thereof. Each lease entered into by the authority with an elementary or secondary school shall provide that the rents payable by the elementary or secondary school 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 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 section 79-1841, the authority shall require the elementary or secondary school involved to enter into agreements obligating such school to make payments sufficient to accomplish the purposes described in this section.

**Source:** Laws 1997, LB 809, § 44.

**79-1845 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 Elementary and Secondary School 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 Public Funds Deposit Security Act, except to the extent provided otherwise in the resolution authoriz-

ing 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 1997, LB 809, § 45.

**Cross References**

**Public Funds Deposit Security Act**, see section 77-2386.

**79-1846 Bondholders and trustee; enforcement of rights.**

Any holder of bonds or of any of the coupons appertaining thereto issued under the Nebraska Elementary and Secondary School 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 1997, LB 809, § 46.

**79-1847 Act, how construed.**

The Nebraska Elementary and Secondary School 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 1997, LB 809, § 47.

**79-1848 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 1997, LB 809, § 48.

**79-1849 Authority; public purpose; exemptions from taxation.**

The exercise of the powers granted by the Nebraska Elementary and Secondary School 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 79-1841. 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 1997, LB 809, § 49.

**79-1850 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 Elementary and Secondary School 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 1997, LB 809, § 50.

**79-1851 Act; supplemental to other laws.**

The Nebraska Elementary and Secondary School 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 of or regulation by or require the approval or consent of any municipality, political subdivision, commission, board, body, bureau, official, or agency of the state.

**Source:** Laws 1997, LB 809, § 51.

**79-1852 Act; provisions controlling.**

To the extent that the Nebraska Elementary and Secondary School Finance Authority Act is inconsistent with any general statute or special act or parts thereof, the Nebraska Elementary and Secondary School Finance Authority Act shall control.

**Source:** Laws 1997, LB 809, § 52.

**ARTICLE 19**

**NEBRASKA READ, EDUCATE, AND DEVELOP YOUTH ACT**

Section

79-1901. Act, how cited.

79-1902. State Department of Education; cooperation with Department of Health and Human Services; develop educational packet; contents.

79-1903. Packet; development; distribution; private financial assistance.

79-1904. READY Cash Fund; created; use; investment.

79-1905. Repealed. Laws 2013, LB 222, § 48.

**79-1901 Act, how cited.**

Sections 79-1901 to 79-1904 shall be known and may be cited as the Nebraska Read, Educate, and Develop Youth Act.

**Source:** Laws 2002, LB 326, § 1; Laws 2013, LB222, § 35.

**79-1902 State Department of Education; cooperation with Department of Health and Human Services; develop educational packet; contents.**

(1) The State Department of Education, in cooperation with the Department of Health and Human Services, shall develop a packet entitled "Learning Begins at Birth" to be given to the parents of each child born in this state on and after January 1, 2003.

(2) The packet shall contain information about child development, child care, how children learn, children's health including, on and after July 14, 2006, information on the prevention of sudden infant death syndrome and shaken baby syndrome, services available to children and parents, and any other information deemed relevant by the Department of Health and Human Services or the State Department of Education. The State Department of Education shall indicate which information in the packet is appropriate for the parents of infants, for the parents of toddlers, and for the parents of preschoolers.

(3) The State Department of Education shall develop a variety of types of the packet, based on the needs of parents. The information in the packets may be in

the form of printed material or in the form of video tapes, audio cassettes, or other appropriate media.

**Source:** Laws 2002, LB 326, § 2; Laws 2006, LB 994, § 109; Laws 2007, LB296, § 714.

**79-1903 Packet; development; distribution; private financial assistance.**

(1) The Department of Health and Human Services shall assist the State Department of Education in developing the packet and shall develop methods of distributing the packet to parents upon the birth of a child in this state beginning on January 1, 2003.

(2) The departments shall solicit private financial assistance to carry out their duties under the Nebraska Read, Educate, and Develop Youth Act. The departments shall not endorse any private company or product, but private companies may have their names placed on materials in the packet to help underwrite the costs of developing and distributing the packets.

**Source:** Laws 2002, LB 326, § 3; Laws 2007, LB296, § 715.

**79-1904 READY Cash Fund; created; use; investment.**

The READY Cash Fund is created. The fund shall contain money received from private sources to underwrite the costs of the Nebraska Read, Educate, and Develop Youth Act. The fund shall be used by the State Department of Education and the Department of Health and Human Services to aid in carrying out their duties under the act. The fund shall be administered by the Department of Health and Human Services. Any money in the fund available for investment may 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 326, § 4; Laws 2007, LB296, § 716.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**79-1905 Repealed. Laws 2013, LB 222, § 48.**

**ARTICLE 20**

**NEBRASKA SCHOOLS CONSTRUCTION ALTERNATIVES ACT**

Section

- 79-2001. Transferred to section 13-2901.
- 79-2002. Transferred to section 13-2902.
- 79-2003. Transferred to section 13-2903.
- 79-2004. Transferred to section 13-2904.
- 79-2005. Transferred to section 13-2905.
- 79-2006. Transferred to section 13-2906.
- 79-2007. Transferred to section 13-2907.
- 79-2008. Transferred to section 13-2908.
- 79-2009. Transferred to section 13-2909.
- 79-2010. Transferred to section 13-2910.
- 79-2011. Transferred to section 13-2911.
- 79-2012. Transferred to section 13-2912.
- 79-2013. Transferred to section 13-2913.
- 79-2014. Repealed. Laws 2008, LB 889, § 16.
- 79-2015. Repealed. Laws 2008, LB 889, § 16.

- 79-2001 Transferred to section 13-2901.**
- 79-2002 Transferred to section 13-2902.**
- 79-2003 Transferred to section 13-2903.**
- 79-2004 Transferred to section 13-2904.**
- 79-2005 Transferred to section 13-2905.**
- 79-2006 Transferred to section 13-2906.**
- 79-2007 Transferred to section 13-2907.**
- 79-2008 Transferred to section 13-2908.**
- 79-2009 Transferred to section 13-2909.**
- 79-2010 Transferred to section 13-2910.**
- 79-2011 Transferred to section 13-2911.**
- 79-2012 Transferred to section 13-2912.**
- 79-2013 Transferred to section 13-2913.**
- 79-2014 Repealed. Laws 2008, LB 889, § 16.**
- 79-2015 Repealed. Laws 2008, LB 889, § 16.**

## ARTICLE 21

### LEARNING COMMUNITY

#### Section

- 79-2101. Learning community, defined; fiscal year.
- 79-2102. Establishment of new learning community; Commissioner of Education; certification.
- 79-2102.01. Learning community coordinating council; meeting; officers; Secretary of State; duties.
- 79-2103. State Department of Education; learning community funds; distribution.
- 79-2104. Learning community coordinating council; powers.
- 79-2104.01. Learning community coordinating council; advisory committee; members; duties.
- 79-2104.02. Learning community coordinating council; use of funds; report.
- 79-2104.03. Advisory committee; submit plan for early childhood education programs for children in poverty; powers and duties.
- 79-2105. Repealed. Laws 2007, LB 641, § 54.
- 79-2106. Repealed. Laws 2007, LB 641, § 54.
- 79-2107. Boundaries of certain school districts; requirements.
- 79-2108. Repealed. Laws 2007, LB 641, § 54.
- 79-2109. Repealed. Laws 2007, LB 641, § 54.
- 79-2110. Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.
- 79-2110.01. Open enrollment students; how treated; disability; transportation services.
- 79-2111. Elementary learning center facilities; focus school or program capital projects; tax levy; repayment of funds; interest; waiver.
- 79-2112. Elementary learning center; elementary learning center executive director; qualifications; assistants and employees.
- 79-2113. Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.

## Section

- 79-2114. Elementary learning center; services and programs; report required.
- 79-2115. Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits.
- 79-2116. Elementary learning center; employees; terms and conditions of employment.
- 79-2117. Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.
- 79-2118. Diversity plan; contents; approval; report.
- 79-2119. Insurance coverage; authorized.
- 79-2120. State Department of Education; certification of students qualifying for free or reduced-price lunches.
- 79-2121. Plan to reduce excessive absenteeism; development and participation.

**79-2101 Learning community, defined; fiscal year.**

Learning community means a political subdivision which shares the territory of member school districts and is governed by a learning community coordinating council. The fiscal year for a learning community shall be the same as for member school districts.

**Source:** Laws 2006, LB 1024, § 103; Laws 2007, LB641, § 35.

**79-2102 Establishment of new learning community; Commissioner of Education; certification.**

On or before September 15, 2007, and on or before August 1 of each odd-numbered year following the official designation of any new city of the metropolitan class or any valid request to form a new learning community, the Commissioner of Education shall certify the establishment of a new learning community with the effective date of the first Thursday after the first Tuesday in January of the next odd-numbered year following such certification to the county clerks, election commissioners, and county assessors of the counties with territory in the new learning community, to the Property Tax Administrator, to the State Department of Education, and to the school boards of the member school districts of the new learning community. A learning community shall be established for each city of the metropolitan class and shall include all school districts for which the principal office of the school district is located in the county where the city of the metropolitan class is located and all school districts for which the principal office of the school district is located in a county that has a contiguous border of at least five miles in the aggregate with such city of the metropolitan class. A learning community may also be established at the request of at least three school boards if (1) all school districts for which the principal office of the school district is located in one or more specified counties are participating in the request and either (a) such school districts are all sparse or very sparse as determined pursuant to the Tax Equity and Educational Opportunities Support Act or (b) have a minimum combined total of at least two thousand students or (2) the school districts participating in the request have a minimum combined total of at least ten thousand students. Such requests shall be received by the Commissioner of Education on or before May 1 of each odd-numbered year.

**Source:** Laws 2006, LB 1024, § 104; Laws 2007, LB641, § 36; Laws 2008, LB988, § 54; Laws 2008, LB1154, § 16.

**Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-2102.01 Learning community coordinating council; meeting; officers; Secretary of State; duties.**

The Secretary of State or his or her designee shall schedule and host the first meeting of the newly elected learning community coordinating council during the month of January following the election and shall schedule and shall host at least one meeting each month for the immediately following February and March. The Secretary of State shall preside until the council elects officers designated by the bylaws. Those officers shall preside at the following meetings of such council. The Secretary of State shall serve as a facilitator at such meetings of the council through March 31 of such year as the council begins taking steps necessary to operate as a learning community.

**Source:** Laws 2007, LB641, § 38; Laws 2008, LB1154, § 17.

**Cross References**

**Election districts**, see sections 32-553 and 32-555.01.

**Members, election**, see section 32-546.01.

**Vacancies, how filled**, see section 32-567.

**79-2103 State Department of Education; learning community funds; distribution.**

The State Department of Education shall provide learning community funds to learning communities pursuant to this section. Learning community funds shall be distributed to each qualified learning community on or before January 30 of the school fiscal year during which the learning community is established and on or before September 15 of each school fiscal year thereafter in an amount equal to the product of the ratio of the amount appropriated for learning community funds divided by the sum of the number of formula students in all learning communities that will be established during such fiscal year plus two times the number of formula students in all other learning communities for the calculation of state aid for member school districts for such school fiscal year multiplied by the number of such formula students in the learning community for learning communities that will be established in such school fiscal year or two times the number of such formula students for all other learning communities. It is the intent of the Legislature to appropriate for each fiscal year up to an amount equal to five hundred thousand dollars for each learning community to be established in such fiscal year plus one million dollars for each learning community that will be in the first full fiscal year for such learning community in such fiscal year plus the amount appropriated in the prior year for all other learning communities increased by the basic allowable growth rate described in section 79-1025.

**Source:** Laws 2006, LB 1024, § 105; Laws 2007, LB641, § 39.

**79-2104 Learning community coordinating council; powers.**

A learning community coordinating council shall have the authority to:

(1) Levy a common levy for the general funds of member school districts pursuant to sections 77-3442 and 79-1073;

(2) Levy a common levy for the special building funds of member school districts pursuant to sections 77-3442 and 79-1073.01;

(3) Levy for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the

learning community coordinating council pursuant to subdivision (2)(h) of section 77-3442 and section 79-2111;

(4) Levy for early childhood education programs for children in poverty, for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects pursuant to subdivision (2)(i) of section 77-3442, except that not more than ten percent of such levy may be used for elementary learning center employees;

(5) Collect, analyze, and report data and information, including, but not limited to, information provided by a school district pursuant to subsection (5) of section 79-201;

(6) Approve focus schools and focus programs to be operated by member school districts;

(7) Adopt, approve, and implement a diversity plan which shall include open enrollment and may include focus schools, focus programs, magnet schools, and pathways pursuant to section 79-2110;

(8) Administer the open enrollment provisions in section 79-2110 for the learning community as part of a diversity plan developed by the council to provide educational opportunities which will result in increased diversity in schools across the learning community;

(9) Annually conduct school fairs to provide students and parents the opportunity to explore the educational opportunities available at each school in the learning community and develop other methods for encouraging access to such information and promotional materials;

(10) Develop and approve reorganization plans for submission pursuant to the Learning Community Reorganization Act;

(11) Establish and administer elementary learning centers through achievement subcouncils pursuant to sections 79-2112 to 79-2114;

(12) Administer the learning community funds distributed to the learning community pursuant to section 79-2111;

(13) Approve or disapprove poverty plans and limited English proficiency plans for member school districts through achievement subcouncils established under section 79-2117;

(14) Establish a procedure for receiving community input and complaints regarding the learning community;

(15) Establish a procedure to assist parents, citizens, and member school districts in accessing an approved center pursuant to the Dispute Resolution Act to resolve disputes involving member school districts or the learning community. Such procedure may include payment by the learning community for some mediation services;

(16) Establish and administer pilot projects related to enhancing the academic achievement of elementary students, particularly students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility;

(17) Provide funding to public or private entities engaged in the juvenile justice system providing prefilming and diversion programming designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system; and

(18) Hold public hearings at its discretion in response to issues raised by residents regarding the learning community, a member school district, and academic achievement.

**Source:** Laws 2006, LB 1024, § 106; Laws 2007, LB641, § 40; Laws 2008, LB1154, § 18; Laws 2009, LB392, § 16; Laws 2010, LB1070, § 13; Laws 2011, LB463, § 20; Laws 2013, LB585, § 3.

**Cross References**

**Dispute Resolution Act**, see section 25-2901.

**Learning Community Reorganization Act**, see section 79-4,117.

**79-2104.01 Learning community coordinating council; advisory committee; members; duties.**

Each learning community coordinating council shall have an advisory committee composed of the superintendent from each member school district or his or her representative. The advisory committee shall:

- (1) Review issues related to open enrollment;
- (2) Review proposals for focus programs, focus schools, magnet schools, and pathways;
- (3) Provide recommendations for improving academic achievement across the learning community;
- (4) Provide recommendations for improving the learning community's diversity plan;
- (5) Submit a plan to the learning community coordinating council providing for the implementation and administration of early childhood education programs for children in poverty; and
- (6) Provide input to the learning community coordinating council on other issues as requested.

**Source:** Laws 2008, LB1154, § 19; Laws 2013, LB585, § 4.

**79-2104.02 Learning community coordinating council; use of funds; report.**

Each learning community coordinating council shall use any funds received after January 15, 2011, pursuant to section 79-1241.03 for evaluation and research pursuant to plans developed by the learning community coordinating council with assistance from the Educational Service Unit Coordinating Council and adjusted on an ongoing basis. The evaluation shall be conducted by one or more other entities or individuals who are not employees of the learning community and shall measure progress toward the goals and objectives of the learning community, which goals and objectives shall include reduction of excessive absenteeism of students in the member school districts of the learning community and closing academic achievement gaps based on socioeconomic status, and the effectiveness of the approaches used by the learning community or pilot project to reach such goals and objectives. Any research conducted pursuant to this section shall also be related to such goals and objectives. After the first full year of operation, each learning community shall report evaluation and research results electronically to the Education Committee of the Legislature on or before January 1 of each year.

**Source:** Laws 2010, LB1070, § 17; Laws 2011, LB333, § 16; Laws 2011, LB463, § 21; Laws 2012, LB782, § 162; Laws 2013, LB410, § 15.

**79-2104.03 Advisory committee; submit plan for early childhood education programs for children in poverty; powers and duties.**

The advisory committee described in section 79-2104.01 shall submit a plan as provided in subdivision (5) of section 79-2104.01 to the learning community coordinating council for any early childhood education programs for children in poverty and the services to be provided by such programs. In developing the plan, the advisory committee shall seek input from member school districts and community resources and collaborate with such resources in order to maximize the available opportunities and resources for such programs. The advisory committee may, as part of such plan, recommend services to be provided through contract with, or grants to, school districts to provide or contract for some or all of the services. The advisory committee shall take special efforts to establish early childhood education programs for children in poverty so that such programs are readily available and accessible to children and families located in areas with a high concentration of poverty.

**Source:** Laws 2013, LB585, § 5.

**79-2105 Repealed. Laws 2007, LB 641, § 54.**

**79-2106 Repealed. Laws 2007, LB 641, § 54.**

**79-2107 Boundaries of certain school districts; requirements.**

The boundaries of all school districts for which the principal office of the school district is located in a county in which a city of the metropolitan class is located and all school districts for which the principal office of the school district is located in a county that has a contiguous border of at least five miles in the aggregate with such city of the metropolitan class shall remain as depicted on the map kept by the county clerk pursuant to section 79-490 as of March 1, 2006, for cities of the metropolitan class designated as such prior to January 2008 or as of March 1 immediately preceding the designation as a city of the metropolitan class for cities designated as such on or after January 1, 2008, until a learning community has been established for such city of the metropolitan class, except that such districts may transfer property to other such districts with the agreement of the school board of each affected district prior to the effective date for such learning community.

**Source:** Laws 2006, LB 1024, § 109; Laws 2007, LB641, § 41; Laws 2008, LB1154, § 20.

**79-2108 Repealed. Laws 2007, LB 641, § 54.**

**79-2109 Repealed. Laws 2007, LB 641, § 54.**

**79-2110 Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.**

(1)(a) Each diversity plan shall provide for open enrollment in all school buildings in the learning community, subject to specific limitations necessary to bring about diverse enrollments in each school building in the learning community. Such limitations, for school buildings other than focus schools and programs other than focus programs, shall include giving preference at each school building first to siblings of students who will be enrolled as continuing

students in such school building or program for the first school year for which enrollment is sought in such school building and then to students that contribute to the socioeconomic diversity of enrollment at each building and may include establishing zone limitations in which students may access several schools other than their home attendance area school. Notwithstanding the limitations necessary to bring about diversity, open enrollment shall include providing access to students who do not contribute to the socioeconomic diversity of a school building, if, subsequent to the open enrollment selection process that is subject to limitations necessary to bring about diverse enrollments, capacity remains in a school building. In such a case, students who have applied to attend such school building shall be selected to attend such school building on a random basis up to the remaining capacity of such building. A student who has otherwise been disqualified from the school building pursuant to the school district's code of conduct or related school discipline rules shall not be eligible for open enrollment pursuant to this section. Any student who attended a particular school building in the prior school year and who is seeking education in the grades offered in such school building shall be allowed to continue attending such school building as a continuing student.

(b) To facilitate the open enrollment provisions of this subsection, each school year each member school district in a learning community shall establish a maximum capacity for each school building under such district's control pursuant to procedures and criteria established by the learning community coordinating council. Each member school district shall also establish attendance areas for each school building under the district's control, except that the school board shall not establish attendance areas for focus schools or focus programs. The attendance areas shall be established such that all of the territory of the school district is within an attendance area for each grade. Students residing in a school district shall be allowed to attend a school building in such school district.

(c) For purposes of this section and sections 79-238 and 79-611, student who contributes to the socioeconomic diversity of enrollment means (i) a student who does not qualify for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will attend has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or (ii) a student who qualifies for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community.

(2)(a) On or before March 15 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, a parent or guardian of a student residing in a member school district in a learning community may submit an application to any school district in the learning community on behalf of a student who is applying to attend a school building for the following school year that is not in an attendance area where the applicant resides or a focus school, focus program, or magnet school as such terms are defined in section 79-769. On or before April 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, the school district shall accept or reject such applications based on the

capacity of the school building, the eligibility of the applicant for the school building or program, the number of such applicants that will be accepted for a given school building, and whether or not the applicant contributes to the socioeconomic diversity of the school or program to which he or she has applied and for which he or she is eligible. The school district shall notify such parent or guardian in writing of the acceptance or rejection.

(b) A parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of this section. Nothing in this section requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of this section shall be based on any verified information provided on the application. If no such information is provided the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of this section.

(c) A student may not apply to attend a school building in the learning community for any grades that are offered by another school building for which the student had previously applied and been accepted pursuant to this section, absent a hardship exception as established by the individual school district. On or before September 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, each school district shall provide to the learning community coordinating council a complete and accurate report of all applications received, including the number of students who applied at each grade level at each building, the number of students accepted at each grade level at each building, the number of such students that contributed to the socioeconomic diversity that applied and were accepted, the number of applicants denied and the rationales for denial, and other such information as requested by the learning community coordinating council.

(3) Each diversity plan may also include establishment of one or more focus schools or focus programs and the involvement of every member school district in one or more pathways across member school districts. Enrollment in each focus school or focus program shall be designed to reflect the socioeconomic diversity of the learning community as a whole. School district selection of students for focus schools or focus programs shall be on a random basis from two pools of applicants, those who qualify for free and reduced-price lunches and those who do not qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who do not qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who do not qualify for free and reduced-price lunches. If more capacity exists in a focus school or program than the number of applicants for such focus school or program that contribute to the socioeconomic diversity of the focus school or program, the school district shall randomly select applicants up to the number of applicants that will be accepted for such building. A student who will complete the grades offered at a focus program, focus school, or magnet school that is part of a pathway shall be allowed to attend the focus program, focus school, or magnet

school offering the next grade level as part of the pathway as a continuing student. A student who completes the grades offered at a focus program, focus school, or magnet school shall be allowed to attend a school offering the next grade level in the school district responsible for the focus program, focus school, or magnet school as a continuing student. A student who attended a program or school in the school year immediately preceding the first school year for which the program or school will operate as a focus program or focus school approved by the learning community and meeting the requirements of section 79-769 and who has not completed the grades offered at the focus program or focus school shall be a continuing student in the program or school.

(4) On or before February 15 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, a parent or guardian of a student who is currently attending a school building or program, except a magnet school, focus school, or focus program, outside of the attendance area where the student resides and who will complete the grades offered at such school building prior to the following school year shall provide notice, on a form provided by the school district, to the school board of the school district containing such school building if such student will attend another school building within such district as a continuing student and which school building such student would prefer to attend. On or before March 1, such school board shall provide a notice to such parent or guardian stating which school building or buildings the student shall be allowed to attend in such school district as a continuing student for the following school year. If the student resides within the school district, the notice shall include the school building offering the grade the student will be entering for the following school year in the attendance area where the student resides. This subsection shall not apply to focus schools or programs.

(5) A parent or guardian of a student who moves to a new residence in the learning community after April 1 may apply directly to a school board within the learning community within ninety days after moving for the student to attend a school building outside of the attendance area where the student resides. Such school board shall accept or reject such application within fifteen days after receiving the application, based on the number of applications and qualifications pursuant to subsection (2) or (3) of this section for all other students.

(6) A parent or guardian of a student who wishes to change school buildings for emergency or hardship reasons may apply directly to a school board within the learning community at any time for the student to attend a school building outside of the attendance area where the student resides. Such application shall state the emergency or hardship and shall be kept confidential by the school board. Such school board shall accept or reject such application within fifteen days after receiving the application. Applications shall only be accepted if an emergency or hardship was presented which justifies an exemption from the procedures in subsection (4) of this section based on the judgment of such school board, and such acceptance shall not exceed the number of applications that will be accepted for the school year pursuant to subsection (2) or (3) of this section for such building.

**Source:** Laws 2006, LB 1024, § 16; Laws 2007, LB641, § 42; Laws 2008, LB1154, § 21; Laws 2009, LB62, § 6; Laws 2010, LB1070, § 14.

**79-2110.01 Open enrollment students; how treated; disability; transportation services.**

(1) For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-1127, open enrollment students shall be treated as resident students of the open enrollment school district. In determining eligibility for extracurricular activities as defined in section 79-2,126, the open enrollment student shall be treated similarly to other students who transfer into the school from another public, private, denominational, or parochial school.

(2) For open enrollment students verified as having a disability as defined in section 79-1118.01, the transportation services set forth in section 79-1129 shall be provided by the open enrollment school district. The State Department of Education shall reimburse each learning community school district for special education programs provided to open enrollment students in accordance with section 79-1142. The resident school district of an open enrollment student shall be exempted from the payment responsibility set forth in section 79-1140. For purposes of the calculation to determine reimbursement pursuant to section 79-1142, the open enrollment school district shall include the adjusted average per pupil cost as defined in section 79-1114 of the open enrollment school district.

(3) For purposes of the Tax Equity and Educational Opportunities Support Act, open enrollment students shall not be counted as formula students by the resident school district and shall be counted by the open enrollment school district.

**Source:** Laws 2010, LB1071, § 33.

**Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**79-2111 Elementary learning center facilities; focus school or program capital projects; tax levy; repayment of funds; interest; waiver.**

(1) A learning community may levy a maximum levy pursuant to subdivision (2)(h) of section 77-3442 for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated costs for focus school or program capital projects approved pursuant to this section. The proceeds from such levy shall be used for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and to reduce the bonded indebtedness required for approved projects by up to fifty percent of the estimated cost of the approved project. The funds used for reductions of bonded indebtedness shall be transferred to the school district for which the project was approved and shall be deposited in such school district's special building fund for use on such project.

(2) The learning community may approve pursuant to this section funding for capital projects which will include the purchase, construction, or remodeling of facilities for a focus school or program designed to meet the requirements of section 79-769. Such approval shall include an estimated cost for the project and shall state the amount that will be provided by the learning community for such project.

(3) If, within the ten years following receipt of the funding for a capital project pursuant to this section, a school district receiving such funding uses the facility purchased, constructed, or remodeled with such funding for purposes other than those stated to qualify for the funds, the school district shall repay such funds to the learning community with interest at the rate prescribed in section 45-104.02 accruing from the date the funds were transferred to the school district's building fund as of the last date the facility was used for such purpose as determined by the learning community coordinating council or the date that the learning community coordinating council determines that the facility will not be used for such purpose or that such facility will not be purchased, constructed, or remodeled for such purpose. Interest shall continue to accrue on outstanding balances until the repayment has been completed. The remaining terms of repayment shall be determined by the learning community coordinating council. The learning community coordinating council may waive such repayment if the facility is used for a different focus school or program for a period of time that will result in the use of the facility for qualifying purposes for a total of at least ten years.

**Source:** Laws 2007, LB641, § 43; Laws 2008, LB1154, § 22; Laws 2010, LB1070, § 15.

**79-2112 Elementary learning center; elementary learning center executive director; qualifications; assistants and employees.**

(1) Elementary learning centers shall serve as visionary resource centers for enhancing the academic success of elementary students, particularly those students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility. Each learning community coordinating council shall provide for a system of elementary learning centers to be administered by an elementary learning center executive director.

(2) The elementary learning center executive director shall be appointed by the learning community coordinating council. The executive director shall be a person well equipped to work with populations in poverty and to analyze effective methods for assisting and encouraging such populations to access the programs offered by elementary learning centers. The elementary learning center executive director shall receive such salary as is set by the learning community coordinating council.

(3) The elementary learning center executive director may select, appoint, and compensate as he or she sees fit, within the amount provided by the learning community coordinating council, such noncertificated assistants and noncertificated employees as he or she deems necessary to discharge the responsibilities under sections 79-2112 to 79-2114. Such assistants and employees shall be subject to the control and supervision of the elementary learning center executive director.

**Source:** Laws 2007, LB641, § 44; Laws 2010, LB1070, § 16.

**79-2113 Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.**

(1) On or before the second June 1 immediately following the establishment of a new learning community, the learning community coordinating council shall establish at least one elementary learning center for each twenty-five elementary schools in which at least thirty-five percent of the students attending

the school who reside in the attendance area of such school qualify for free or reduced-price lunches. The council shall determine how many of the initial elementary learning centers shall be located in each subcouncil district on or before September 1 immediately following the establishment of a new learning community.

(2) Each achievement subcouncil shall submit a plan to the learning community coordinating council for any elementary learning center in its subcouncil district and the services to be provided by such elementary learning center. In developing the plan, the achievement subcouncil shall seek input from community resources and collaborate with such resources in order to maximize the available opportunities and the participation of elementary students and their families. An achievement subcouncil may, as part of such plan, recommend services be provided through contracts with, or grants to, entities other than school districts to provide some or all of the services. Such entities may include collaborative groups which may include the participation of a school district. An achievement subcouncil may also, as part of such plan, recommend that the elementary learning center serve as a clearinghouse for recommending programs provided by school districts or other entities and that the elementary learning center assist students in accessing such programs. The plans for the initial elementary learning centers shall be submitted by the achievement subcouncils to the coordinating council on or before January 1 immediately following the establishment of a new learning community.

(3) Each elementary learning center shall have at least one facility that is located in an area with a high concentration of poverty. Such facility may be owned or leased by the learning community, or the use of the facility may be donated to the learning community. Programs offered by the elementary learning center may be offered in such facility or in other facilities, including school buildings.

**Source:** Laws 2007, LB641, § 45; Laws 2008, LB1154, § 23; Laws 2009, LB392, § 17.

**79-2114 Elementary learning center; services and programs; report required.**

(1) Programs offered by an elementary learning center may be accessed by any elementary-age child who resides in the learning community or any family with an elementary-age child who resides in the learning community. Services to be provided by the elementary learning center shall comply with all applicable state regulations for such services, including, but not limited to, regulations requiring certification of teachers, safety provisions, and compliance with state standards. Such programs shall be designed to enhance the academic success of elementary students and may include, but are not limited to:

(a) Summer school, extended-school-day programs, and extended-school-year programs which may be coordinated with programs offered in the schools;

(b) Literacy centers for providing intensive assistance to elementary-age children and their parents to work on reading skills outside of the school day;

(c) Computer labs;

(d) Tutors for elementary students;

(e) Mentors for elementary students;

(f) Services for transient students;

(g) Attendance advocates to assist in resolving issues that contribute to truancy;

(h) Transportation for truant students;

(i) English classes for parents and other family members;

(j) Health services;

(k) Mental health services;

(l) Child care for children of parents working on their own literacy skills or working with their children on academic skills at the center;

(m) Nutritional services for families working on skills at the center;

(n) Transportation for participating families;

(o) Distribution of clothing and school supplies;

(p) Information on other resources to assist participating families; and

(q) Interpreter services for educational needs.

(2) Each elementary learning center shall report the participation of elementary students in academic programs offered by or in collaboration with the center to the elementary schools attended by such students.

**Source:** Laws 2007, LB641, § 46.

**79-2115 Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits.**

(1) Learning community funds distributed pursuant to section 79-2103 may be used by the learning community coordinating council receiving the funds for:

(a) The administration and operation of the learning community;

(b) The administration, operations, and programs of elementary learning centers pursuant to sections 79-2112 to 79-2114;

(c) Supplements for extended hours to teachers in elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches;

(d) Transportation for parents of elementary students who qualify for free or reduced-price lunches to school functions of such students in elementary schools;

(e) Up to six social workers to provide services through the elementary learning centers; and

(f) Pilot projects authorized pursuant to section 79-2104.

(2) Each learning community coordinating council shall adopt policies and procedures for granting supplements for extended hours and for providing transportation for parents if any such funds are to be used for such purposes. An example of a pilot project that could receive such funds would be a school designated as Jump Start Center focused on providing intensive literacy services for elementary students with low reading scores.

(3) Each learning community coordinating council shall provide for financial audits of elementary learning centers and pilot projects. A learning community coordinating council shall serve as the recipient of private funds donated to support any elementary learning center or pilot project receiving funds from such learning community coordinating council and shall assure that the use of

such private funds is included in the financial audits required pursuant to this section.

**Source:** Laws 2007, LB641, § 47; Laws 2008, LB1154, § 24; Laws 2010, LB1070, § 18.

**79-2116 Elementary learning center; employees; terms and conditions of employment.**

Terms and conditions of employment of school employees providing services for an elementary learning center shall be established by the negotiated agreement of the learning community employing such school employees to provide services. For certificated employees as defined in section 79-824, the learning community shall be deemed to be a public employer as defined in section 48-801. Compensation paid to school employees for services provided to a learning community shall be subject to the School Employees Retirement Act unless such employee is employed by a Class V school district, in which case compensation paid such school employee shall be subject to the Class V School Employees Retirement Act.

**Source:** Laws 2007, LB641, § 48; Laws 2011, LB397, § 18.

**Cross References**

**Class V School Employees Retirement Act**, see section 79-978.01.

**School Employees Retirement Act**, see section 79-901.

**79-2117 Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.**

Each learning community coordinating council shall have an achievement subcouncil for each subcouncil district. Each achievement subcouncil shall consist of the three voting coordinating council members representing the subcouncil district plus any nonvoting coordinating council members choosing to participate who represent a school district that has territory within the subcouncil district. The voting coordinating council members shall also be the voting members on the achievement subcouncil. Each achievement subcouncil shall meet as necessary but shall meet and conduct a public hearing within its subcouncil district at least once each school year. Each achievement subcouncil shall:

(1) Develop a diversity plan recommendation for the territory in its subcouncil district that will provide educational opportunities which will result in increased diversity in schools in the subcouncil district;

(2) Administer elementary learning centers in cooperation with the elementary learning center executive director;

(3) Review and approve or disapprove of the poverty plans and limited English proficiency plans for the schools located in its subcouncil district;

(4) Receive community input and complaints regarding the learning community and academic achievement in the subcouncil district; and

(5) Hold public hearings at its discretion in its subcouncil district in response to issues raised by residents of the subcouncil district regarding the learning community, a member school district, and academic achievement in the subcouncil district.

**Source:** Laws 2007, LB641, § 50; Laws 2008, LB1154, § 25; Laws 2009, LB392, § 18.

**79-2118 Diversity plan; contents; approval; report.**

(1) Each learning community, together with its member school districts, shall develop a diversity plan to provide educational opportunities pursuant to sections 79-769 and 79-2110 in each subcouncil district designed to attract students from diverse backgrounds, which plan may be revised from time to time. The initial diversity plan shall be completed by December 31 of the year the initial learning community coordinating council for the learning community takes office. The goal of the diversity plan shall be to annually increase the socioeconomic diversity of enrollment at each grade level in each school building within the learning community until such enrollment reflects the average socioeconomic diversity of the entire enrollment of the learning community.

(2) Each diversity plan for a learning community shall include specific provisions relating to each subcouncil district within such learning community. The specific provisions relating to each subcouncil district shall be approved by both the achievement subcouncil for such district and by the learning community coordinating council.

(3) The learning community coordinating council shall report electronically to the Education Committee of the Legislature on or before January 1 of each odd-numbered year on the diversity and changes in diversity at each grade level in each school building within the learning community and on the academic achievement for different demographic groups in each school building within the learning community.

**Source:** Laws 2007, LB641, § 51; Laws 2008, LB1154, § 26; Laws 2009, LB392, § 19; Laws 2012, LB782, § 163; Laws 2013, LB410, § 16.

**79-2119 Insurance coverage; authorized.**

A learning community coordinating council may permit members of such council to participate in the learning community's hospitalization, medical, surgical, accident, sickness, or term life insurance coverage or any one or more of such coverages. A learning community coordinating council member electing to participate in the insurance program of the learning community shall pay both the employee and the employer portions of the premium for such coverage.

A learning community coordinating council which opts to permit its members to participate in insurance coverage under this section shall report quarterly at a council meeting the council members who have elected such coverage. Such a report shall be made available in the learning community office for review by the public upon request.

**Source:** Laws 2008, LB850, § 2.

**79-2120 State Department of Education; certification of students qualifying for free or reduced-price lunches.**

On or before March 1, 2009, and February 1 of each year thereafter, for purposes of subsection (3) of section 79-238 and sections 79-611 and 79-2110, the State Department of Education shall certify to each learning community and each member school district the average percentage of students qualifying for free or reduced-price lunches in each school building in each member school district and in the aggregate for all school buildings in the learning

community based on the most current information available to the department on the immediately preceding January 1. The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2009, LB62, § 5.

**79-2121 Plan to reduce excessive absenteeism; development and participation.**

The superintendents of any school districts that are members of a learning community shall develop and participate in a plan by August 1, 2011, to reduce excessive absenteeism including a process to share information regarding at-risk youth with the goal of improving educational outcomes, providing effective interventions that impact risk factors, and reducing unnecessary penetration deeper into the juvenile justice system. For purposes of this section, at-risk youth means children who are under the supervision of the Office of Probation Administration, are committed to the care, custody, or supervision of the Department of Health and Human Services, are otherwise involved in the juvenile justice system, or have been absent from school for more than five days per quarter or the hourly equivalent except when excused by school authorities or when a documented illness makes attendance impossible or impracticable.

**Source:** Laws 2011, LB463, § 22.

**ARTICLE 22**

**INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY  
FOR MILITARY CHILDREN**

Section

- 79-2201. Compact; contents.
- 79-2202. Terms, defined.
- 79-2203. Department; duties; staff support.
- 79-2204. State Council on Educational Opportunity for Military Children; created; members; terms; expenses; duties.
- 79-2205. Compact commissioner; duties.
- 79-2206. Costs of administering compact.

**79-2201 Compact; contents.**

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Interstate Compact on Educational Opportunity for Military Children

ARTICLE I

PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance or age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

## ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. “Active duty” means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.

B. “Children of military families” means school-aged children, enrolled in kindergarten through twelfth grade, in the household of an active duty member.

C. “Compact commissioner” means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. “Deployment” means the period one month prior to the service members’ departure from their home station on military orders through six months after return to their home station.

E. “Education records” or “educational records” means those official records, files, and data directly related to a student and maintained by the school or local education agency, including, but not limited to, records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. “Extracurricular activities” means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. “Interstate Commission on Educational Opportunity for Military Children” means the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. “Local education agency” means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

I. “Member state” means a state that has enacted this compact.

J. “Military installation” means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the

United States Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other United States territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Nonmember state" means a state that has not enacted this compact.

L. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other United States territory.

P. "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

Q. "Transition" means (1) the formal and physical process of transferring from school to school or (2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. "Veteran" means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

### ARTICLE III APPLICABILITY

A. Except as otherwise provided in Section B, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211;

2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the National Guard and military reserves;
2. members of the uniformed services now retired, except as provided in Section A;
3. veterans of the uniformed services, except as provided in Section A; and
4. other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

#### ARTICLE IV

##### EDUCATIONAL RECORDS AND ENROLLMENT

A. Unofficial or “hand-carried” education records -- In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records and transcripts -- Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student’s official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations -- Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and first grade entrance age -- Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

#### ARTICLE V

##### PLACEMENT AND ATTENDANCE

A. Course placement -- When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student’s enrollment in the sending

state school or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, Honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. Educational program placement -- The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to: (1) gifted and talented programs; and (2) English as a second language. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services -- (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program; and (2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 to 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility -- Local education agency administrative officials shall have flexibility in waiving course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities -- A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

## ARTICLE VI ELIGIBILITY

### A. Eligibility for enrollment

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or

other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation -- State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

## ARTICLE VII GRADUATION

In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:

A. Waiver requirements -- Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams -- States shall accept: (1) exit or end-of-course exams required for graduation from the sending state; (2) national norm-referenced achievement tests; or (3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during senior year -- Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

## ARTICLE VIII STATE COORDINATION

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own state council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appro-

priate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

## ARTICLE IX

### INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or state council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense, shall serve as an ex officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by federal and state statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime, or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes; or
7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

## ARTICLE X

### POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire, or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting, and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

#### ARTICLE XI

##### ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;
2. Establishing an executive committee and such other committees as may be necessary;
3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;
4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and
7. Providing "start up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and

necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers, and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or

alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## ARTICLE XII

### RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority -- The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure -- Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act" of 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

## ARTICLE XIII

### OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

#### A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

B. Default, Technical Assistance, Suspension, and Termination -- If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

#### C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

#### D. Enforcement

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The Interstate Commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

#### ARTICLE XIV

##### FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate 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 Interstate Commission.

#### ARTICLE XV

##### MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI  
WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII  
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII  
BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

**B. Binding Effect of the Compact**

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Source:** Laws 2011, LB575, § 1.

**79-2202 Terms, defined.**

For purposes of the Interstate Compact on Educational Opportunity for Military Children and sections 79-2202 to 79-2206:

(1) Council means the State Council on Educational Opportunity for Military Children;

(2) Department means the State Department of Education;

(3) Local education agency means a school district as defined in section 79-101; and

(4) State superintendent of education means the Commissioner of Education.

**Source:** Laws 2011, LB575, § 2.

**79-2203 Department; duties; staff support.**

The department shall oversee and provide coordination for the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children. The department shall provide staff support for the council created in section 79-2204.

**Source:** Laws 2011, LB575, § 3.

**79-2204 State Council on Educational Opportunity for Military Children; created; members; terms; expenses; duties.**

(1) The State Council on Educational Opportunity for Military Children is created within the department. The council shall consist of:

(a) The following ex officio members:

(i) The Commissioner of Education;

(ii) The chairperson of the Education Committee of the Legislature, who shall serve as a nonvoting member of the council;

(iii) The compact commissioner appointed pursuant to section 79-2205; and

(iv) The military family education liaison, who shall serve as a member of the council after his or her appointment pursuant to subsection (3) of this section; and

(b) The following members appointed by the State Board of Education:

(i) The superintendent of a school district that has a high concentration of children of military families; and

(ii) A representative of a military installation located in this state.

(2) The members of the council appointed by the State Board of Education shall serve three-year terms. Vacancies in the council shall be filled in the same manner as the initial appointments. The members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council shall have the following duties:

(a) To advise the department with regard to the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children; and

(b) To appoint a military family education liaison to assist families and the state in implementing the compact.

**Source:** Laws 2011, LB575, § 4.

**79-2205 Compact commissioner; duties.**

The deputy commissioner of education shall serve as the compact commissioner and shall be responsible for administering the state's participation in the Interstate Compact on Educational Opportunity for Military Children.

**Source:** Laws 2011, LB575, § 5.

**79-2206 Costs of administering compact.**

The department shall distribute amounts from the Education Innovation Fund pursuant to section 9-812 and may accept a devise, donation, or bequest to pay for any or all of the cost of administering the Interstate Compact on Educational Opportunity for Military Children under the authority given to the State Board of Education under section 79-318.

**Source:** Laws 2011, LB575, § 6.

**ARTICLE 23**

**DIPLOMA OF HIGH SCHOOL EQUIVALENCY ASSISTANCE ACT**

Section

79-2301. Act, how cited.

79-2302. Purpose of act.

79-2303. Terms, defined.

79-2304. Appropriations; legislative intent; use; assistance to institutions; payments.

79-2305. Institutions receiving assistance; report; contents.

79-2306. Payments for equipment and software to administer examinations.

79-2307. Rules and regulations.

**79-2301 Act, how cited.**

Sections 79-2301 to 79-2307 shall be known and may be cited as the Diploma of High School Equivalency Assistance Act.

**Source:** Laws 2013, LB366, § 1.

**79-2302 Purpose of act.**

The purpose of the Diploma of High School Equivalency Assistance Act is to provide assistance to institutions which offer high school equivalency programs in order to defray the costs associated with participation in such programs.

**Source:** Laws 2013, LB366, § 2.

**79-2303 Terms, defined.**

For purposes of the Diploma of High School Equivalency Assistance Act:

(1) Fiscal year means a time period commencing on July 1 and ending on June 30 of the following year;

(2) High school equivalency program means a program which is offered by an institution and provides participants with training and examinations for a diploma of high school equivalency; and

(3) Institution means a state agency, a school district as defined in section 79-101, or a community college area as defined in section 85-1503.

**Source:** Laws 2013, LB366, § 3.

**79-2304 Appropriations; legislative intent; use; assistance to institutions; payments.**

(1) It is the intent of the Legislature to appropriate seven hundred fifty thousand dollars from the General Fund for fiscal years 2013-14 and 2014-15, and any amount determined by the Legislature for any fiscal year thereafter, to the State Department of Education. Such funds shall be used by the department to provide assistance to institutions that offer high school equivalency programs. Assistance shall be provided based on participation in an institution's high school equivalency program as follows:

(a) Each such institution shall receive one assistance payment for each participant who enrolled in its high school equivalency program in the most recently completed fiscal year;

(b) Each such institution shall receive one assistance payment for each enrolled participant who took an initial examination for a diploma of high school equivalency in the most recently completed fiscal year; and

(c) Each such institution shall receive one assistance payment for each participant not enrolled in the institution's high school equivalency program who took the examination for a diploma of high school equivalency in the most recently completed fiscal year.

(2) An institution shall receive no additional assistance for any participant who failed his or her initial examination for a diploma of high school equivalency and requires additional training and testing.

**Source:** Laws 2013, LB366, § 4.

**79-2305 Institutions receiving assistance; report; contents.**

Each institution receiving assistance pursuant to section 79-2304 shall report annually to the State Department of Education. The report shall give a description of the operation of the high school equivalency program for which assistance was provided and shall include information on the following for the most recently completed fiscal year:

(1) The number of diplomas of high school equivalency awarded pursuant to such high school equivalency program;

(2) The number of participants in the high school equivalency program who moved successfully through the continuum of literacy skill levels offered by the program;

(3) The number of participants completing the high school equivalency program who secured entry-level career path employment;

(4) The number of participants completing the high school equivalency program who went on to postsecondary education or additional career training; and

(5) The number of participants in the high school equivalency program who were Nebraska residents or enrolled in a postsecondary educational institution located in Nebraska.

**Source:** Laws 2013, LB366, § 5.

**79-2306 Payments for equipment and software to administer examinations.**

Using the funds allocated from the Education Innovation Fund pursuant to subdivision (4)(b)(viii) of section 9-812, the State Department of Education shall provide each institution offering a high school equivalency program a one-time payment for the acquisition and upgrade of equipment and software necessary to administer examinations for diplomas of high school equivalency.

**Source:** Laws 2013, LB366, § 6; Laws 2014, LB967, § 24.  
Effective date April 3, 2014.

**79-2307 Rules and regulations.**

The State Department of Education may adopt and promulgate rules and regulations to carry out the Diploma of High School Equivalency Assistance Act. Such rules and regulations shall include, but not be limited to, provisions related to the collection of information necessary to provide the assistance provided for in section 79-2304.

**Source:** Laws 2013, LB366, § 7.

**ARTICLE 24**

**SUPERINTENDENT PAY TRANSPARENCY ACT**

Section

79-2401. Act, how cited.

79-2402. School board; board of educational service unit; contract or amendment; publication; contents; contract approval; publication.

79-2403. Contract or amendment; filing with State Department of Education; public posting.

79-2404. Failure to file approved contract or contract amendment; Commissioner of Education; withhold funds; duties; county treasurer; duty.

79-2405. Amendments to contracts; subject to act.

**79-2401 Act, how cited.**

Sections 79-2401 to 79-2405 shall be known and may be cited as the Superintendent Pay Transparency Act.

**Source:** Laws 2014, LB470, § 2.  
Operative date July 1, 2014.

**79-2402 School board; board of educational service unit; contract or amendment; publication; contents; contract approval; publication.**

(1) Before the school board of any school district or the board of any educational service unit approves a proposed contract, or any proposed amendment to an existing contract, for future superintendent services to be rendered to such school district by the current superintendent or future administrator services to be rendered to such educational service unit by the current adminis-

trator, the board shall publish a copy of such proposed contract or amendment, and a reasonable estimate and description of all current and future costs to the school district or educational service unit if the proposed contract or amendment were to be approved, at least three days before the meeting of the board at which such proposed contract or amendment will be considered. Such publication shall also specify the date, time, and place of the public meeting at which the proposed contract or amendment will be considered. Electronic publication on the web site of the school district or educational service unit shall satisfy the requirement of this subsection if such electronic publication is prominently displayed and allows public access to the entire proposed contract or amendment.

(2) After the school board of any school district or the board of any educational service unit approves a contract for future superintendent services to be rendered to such school district by a new superintendent or future administrator services to be rendered to such educational service unit by a new administrator, the board shall publish a copy of such contract, and a reasonable estimate and description of all current and future costs to the school district or educational service unit that will be incurred as a result of such contract, within two days after the meeting of the board at which such contract was approved. Electronic publication on the web site of the school district or educational service unit shall satisfy the requirement of this subsection if such electronic publication is prominently displayed and allows public access to the entire contract.

**Source:** Laws 2014, LB470, § 3.  
Operative date July 1, 2014.

**79-2403 Contract or amendment; filing with State Department of Education; public posting.**

After approval of a contract, or any amendments thereto, for superintendent services or educational service unit administrator services, the approving board shall file a copy of such contract or amendment with the State Department of Education on or before the next succeeding August 1. The department shall have no duty to review such contracts or amendments but shall publicly post all such contracts or amendments received on the web site of the department.

**Source:** Laws 2014, LB470, § 4.  
Operative date July 1, 2014.

**79-2404 Failure to file approved contract or contract amendment; Commissioner of Education; withhold funds; duties; county treasurer; duty.**

If the school board of any school district or the board of any educational service unit fails to timely file a copy of an approved contract, or contract amendment, for superintendent services or educational service unit administrator services with the State Department of Education as required in section 79-2403, the Commissioner of Education, after notice to the board president and either the superintendent or educational service unit administrator and an opportunity to be heard, shall direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act to the school district or core services and technology infrastructure funds granted pursuant to section 79-1241.03 to the educational service unit be withheld until such time as the contract or amendment is received by the department. In addition, the commis-

sioner shall direct each county treasurer of a county with territory in the school district or educational service unit to withhold all money belonging to the school district or educational service unit until such time as the commissioner notifies such county treasurer of receipt of such contract or amendment. Each such county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the school district shall be based on the proportionate share of property tax receipts allocated to the school district pursuant to section 79-1073 in addition to the other property tax receipts belonging to the school district. If the board does not comply with this section prior to October 1 following the school fiscal year for which the state aid or core services and technology infrastructure funding was calculated, the funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature in accordance with section 79-1031.

**Source:** Laws 2014, LB470, § 5.  
Operative date July 1, 2014.

**Cross References**

**Tax Equity and Educational Opportunities Support Act**, see section 79-1001.

**79-2405 Amendments to contracts; subject to act.**

All amendments to a contract for superintendent services or educational service unit administrator services shall be subject to the Superintendent Pay Transparency Act, including, but not limited to, amendments involving salary increases or benefit changes.

**Source:** Laws 2014, LB470, § 6.  
Operative date July 1, 2014.



## SERVICEMEMBERS AND VETERANS

# CHAPTER 80

## SERVICEMEMBERS AND VETERANS

Article.

1. County Veterans Service Committee. 80-101 to 80-111.
2. Memorials. 80-201 to 80-206.
3. Nebraska Veterans Homes. 80-301 to 80-331.
4. Veterans Aid. 80-401 to 80-414.
5. Veterans Service Coordinating Committee. Omitted.
6. Mentally Ill Veterans. 80-601 to 80-606.
7. Minor Veterans. 80-701.
8. Vietnam Veterans Education Loans. Repealed.
9. Education Assistance for Military Personnel. 80-901 to 80-903.

### Cross References

#### Constitutional provisions:

- Crimes committed by military personnel in time of war, procedure, see Article I, section 10, Constitution of Nebraska.
- Governor is commander-in-chief, see Article IV, section 14, Constitution of Nebraska.
- Military subordinate to civil power, see Article I, section 17, Constitution of Nebraska.
- Militia, provided by Legislature, see Article XIV, section 1, Constitution of Nebraska.
- Quartering of soldiers in houses without owners consent, when prohibited, see Article I, section 18, Constitution of Nebraska.
- Right of suffrage of military personnel, see Article VI, section 3, Constitution of Nebraska.

**Acknowledgments before officers of armed forces authorized**, see section 76-227.

**Armories**, see Chapter 18, article 10.

**Bodies of honorably discharged deceased veterans not available to State Anatomical Board**, see section 71-1002.

**Death certificates for military personnel dying outside United States**, recording of, see sections 71-605.01 and 71-605.02.

**Discharge records**, county clerks shall maintain, see sections 23-1309 and 23-1310.

**Elective office**, entry into military or naval service does not create vacancy, see section 32-561.

**Federal forts**, preservation, restoration, and development of abandoned, see sections 72-407 to 72-420.

**Hunting and fishing permits for disabled veterans**, see section 37-420.

**Hunting and fishing permits for military personnel**, resident, see section 37-419.

**Jury service**, exemptions from, see sections 25-1601 and 55-173.

#### License plates:

- Military Honor Plates, see sections 60-3,122.03, 60-3,122.04, and 60-3,130.04.
- Purple Heart award, see sections 60-3,125 and 60-3,130.04.

**Licensed professions and occupations**, renewal license fees waived for practitioners in military service, see sections 38-142 and 38-146.

**Liquor licenses for retail sales near veterans' hospitals or homes prohibited**, see section 53-177.

**Military Code**, see section 55-101.

**Military Justice, Nebraska Code of**, see section 55-401.

**Motor vehicle operator's license renewal**, see section 60-4,121.

**National Guard**, see Chapter 55, article 1.

**Pension money exempt from execution**, see section 25-1559.

**Persons subject to military duty**, exemptions, see section 55-106.

**Public records**, when copies furnished without charge, see sections 23-1310, 33-110, 71-612, and 84-712.02.

**Residence for Election Act purposes**, see section 32-116.

**School facilities for children of residents of federal installations**, see sections 79-5,105 and 79-5,106.

**Schools**, free tuition for children of parent in military service, when, see section 79-216.

**Specific veterans organizations declared to be corporations**, see section 21-608.

**State Guard Act**, see section 55-219.

**Veterans Day**, proclamation by Governor, see section 84-104.01.

**Wyuka Cemetery**, soldiers burial ground, see sections 12-104 and 12-105.

## ARTICLE 1

### COUNTY VETERANS SERVICE COMMITTEE

#### Cross References

**Burial ground**, see sections 12-104 and 12-105.

**Children of parent in military service**, free tuition in schools, when, see section 79-216.

**Discharge record**, county clerk shall keep, see sections 23-1309 and 23-1310.

**Pension money**, exempt from execution, see section 25-1559.

## Section

- 80-101. County veterans service committee; members; term; compensation; vacancy, how filled; bond; expenses.
- 80-102. County veterans service committee; meetings; relief; persons entitled; determination; payment; tax; amount authorized.
- 80-102.01. County veterans service committee; acceptance of gifts, devises, and bequests.
- 80-103. County veterans service committee; members; removal from office; filling of vacancy.
- 80-104. Veterans; burial by county veterans service committee; when authorized; surviving relatives may conduct funeral.
- 80-105. Veterans; graves; headstones.
- 80-106. Veterans; burial expenses; payment.
- 80-107. Veterans graves, markers; furnish, when.
- 80-108. Veterans graves; petition for markers.
- 80-109. Repealed. Laws 1959, c. 423, § 2.
- 80-110. Repealed. Laws 1980, LB 741, § 1.
- 80-111. Repealed. Laws 1997, LB 396, § 28.

**80-101 County veterans service committee; members; term; compensation; vacancy, how filled; bond; expenses.**

(1) Each county board shall appoint a county veterans service committee of five members, such choice to be made from a list of eligible veterans recommended by the recognized veterans organizations within the county. Such list shall contain not less than three names for each appointment to be made.

(2) The terms of office of the members of the county veterans service committee initially appointed shall expire on June 30 of the years 1948, 1949, 1950, 1951, and 1952, as designated by the county board in making the respective appointments. As the terms of members expire, the county board shall, during the month of June of each year, appoint or reappoint a member of the committee for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of a 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.

(3) The members of the county veterans service committee shall organize by the appointment of one of their number as chairperson and one as secretary-treasurer. The secretary-treasurer may be the county veterans service officer. The county veterans service officer shall not be a member of the committee. The members of the committee shall qualify by taking the usual oath of office and shall each give bond, if required by the local county board, in an amount determined by the local county board for the faithful performance of the duties of his or her office. The premiums for such bonds shall be paid by the county. Members of the committee shall be entitled to the necessary and actual expenses involved in the performance of their official duties, with mileage reimbursements to be computed at the rate provided in section 81-1176, which shall be paid out of the county general fund.

**Source:** Laws 1889, c. 72, § 2, p. 528; Laws 1905, c. 147, § 1, p. 590; R.S.1913, § 7155; Laws 1915, c. 128, § 1, p. 289; C.S.1922, § 6801; Laws 1927, c. 196, § 1, p. 556; C.S.1929, § 80-104; R.S.1943, § 80-101; Laws 1947, c. 305, § 2, p. 924; Laws 1953, c. 324, § 2, p. 1071; Laws 1969, c. 752, § 1, p. 2830; Laws 1981, LB 204, § 164; Laws 1985, LB 134, § 1; Laws 1996, LB 1011, § 33.

## Cross References

County veterans service committee, other provisions, see sections 80-406 to 80-410.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. *Foote v. County of Adams*, 163 Neb. 406, 80 N.W.2d 179 (1956).

**80-102 County veterans service committee; meetings; relief; persons entitled; determination; payment; tax; amount authorized.**

(1)(a) The county veterans service committee shall meet at least once each year or on call of the chairperson or of any three members of the committee. It shall determine the amount it considers necessary for providing aid, including food, shelter, fuel, wearing apparel, medical or surgical aid, or funeral expenses, for the purposes identified in subdivisions (b) and (c) of this subsection. The county veterans service committee shall certify the amount so determined to the county board, which amount shall be reviewed and considered by the county board in making a levy for an aid fund.

(b) The county veterans service committee shall determine the amount of aid described in subdivision (a) of this subsection for persons who are in need of the aid and who:

(i) Served in the armed forces of the United States during a period of war as defined in section 80-401.01 or during a period of actual hostilities in any war or conflict in which the United States Government was engaged prior to April 6, 1917;

(ii) Were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) or died while in service or as a direct result of that service; and

(iii) Have legal residence in the State of Nebraska for a period of not less than one year and in the county in which application is made for a period of not less than six months.

(c) The county veterans service committee shall determine the amount of aid described in subdivision (a) of this subsection for:

(i) Husbands and wives, surviving spouses, and minor children under eighteen years of age of veterans described in subdivision (b) of this subsection; and

(ii) Payment of expenses of last illness and burial when a veteran described in subdivision (b) of this subsection or a surviving spouse described in subdivision (c)(i) of this subsection passes away leaving no next of kin.

(2) The county board of each county shall annually make such levy or levies as needed to raise the required aid fund referred to in subsection (1) of this section as the county board determines is necessary, not exceeding one cent on each one hundred dollars upon the taxable value of all the taxable property of such county. Any unexpended balance of the aid fund at the end of any fiscal year shall remain in the fund, without reappropriation, for future use. The committee or a majority thereof shall fix the amount to be paid to each claimant, subject to any amounts in the aid fund, and promptly disburse the same to or for the benefit of the claimant. The county clerk shall issue a warrant to the committee or to the county veterans service officer as directed by the committee upon the county treasurer for such amount as the committee shall from time to time request and as amounts in the aid fund permit. The committee shall at the end of each year make a detailed report of its transac-

tions to the county board. Such reports shall be accompanied with vouchers for all money disbursed.

**Source:** Laws 1889, c. 72, § 3, p. 529; R.S.1913, § 7156; C.S.1922, § 6802; C.S.1929, § 80-105; R.S.1943, § 80-102; Laws 1947, c. 305, § 3, p. 924; Laws 1951, c. 299, § 1, p. 987; Laws 1953, c. 324, § 7, p. 1073; Laws 1953, c. 287, § 88, p. 981; Laws 1969, c. 752, § 2, p. 2831; Laws 1979, LB 187, § 252; Laws 1992, LB 719A, § 199; Laws 1996, LB 1085, § 57; Laws 2005, LB 54, § 21.

**80-102.01 County veterans service committee; acceptance of gifts, devises, and bequests.**

The county veterans service committee shall have power to accept gifts, devises, and bequests of real and personal property to carry out the purposes for which such county veterans service committee was established and to the extent of the powers conferred upon such committee by this section and sections 80-101 and 80-102.

**Source:** Laws 1947, c. 305, § 4, p. 925; Laws 1996, LB 1085, § 58.

**80-103 County veterans service committee; members; removal from office; filling of vacancy.**

The county board may at any time remove any member of the county veterans service committee for neglect of duty, maladministration, or upon recommendation of all recognized veterans organizations in the county and appoint another veteran in the place of the member thus removed; *Provided*, that such appointment shall be made in accordance with the provisions of section 80-101.

**Source:** Laws 1889, c. 72, § 4, p. 530; R.S.1913, § 7157; C.S.1922, § 6803; C.S.1929, § 80-106; R.S.1943, § 80-103; Laws 1953, c. 324, § 3, p. 1072; Laws 1969, c. 752, § 3, p. 2832.

**80-104 Veterans; burial by county veterans service committee; when authorized; surviving relatives may conduct funeral.**

It shall be the duty of the county veterans service committee to cause to be decently interred the body of any person who has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from any arm of the military or naval service of the United States, has served during a period of war, as defined in section 80-401.01, or during a period of actual hostilities in any war or conflict in which the United States Government was engaged prior to April 6, 1917, and may hereafter die without leaving sufficient means to defray his or her funeral expenses. Such burials should not be made in any cemetery or burial grounds used exclusively for the burial of pauper dead. If surviving relatives of the deceased shall desire to conduct the funeral, they shall be permitted to do so.

**Source:** Laws 1885, c. 39, § 1, p. 214; Laws 1905, c. 146, § 1, p. 589; R.S.1913, § 7158; C.S.1922, § 6804; C.S.1929, § 80-107; R.S. 1943, § 80-104; Laws 1953, c. 324, § 4, p. 1072; Laws 1959, c. 420, § 1, p. 1415; Laws 2005, LB 54, § 22.

**80-105 Veterans; graves; headstones.**

The grave of any deceased person described in section 80-104 shall be marked by a headstone containing the name of the deceased and the organization to which he or she belonged or in which he or she served. The county veterans service committee, upon the death and burial of any such person residing within such county at the time of his or her death, shall make application to the proper authorities of the government of the United States for a suitable headstone, as provided by Act of Congress, and cause the same to be placed at the head of the deceased person's grave.

**Source:** Laws 1885, c. 39, § 2, p. 214; R.S.1913, § 7159; C.S.1922, § 6805; C.S.1929, § 80-108; R.S.1943, § 80-105; Laws 1953, c. 324, § 5, p. 1072; Laws 2005, LB 54, § 23.

#### **80-106 Veterans; burial expenses; payment.**

The expenses of burial under section 80-104 shall be paid by the county in which such veteran maintained his or her legal residence at time of death. The county board of such county is authorized and directed to audit the account and pay the expenses in similar manner as other accounts against such county are audited and paid.

**Source:** Laws 1885, c. 39, § 3, p. 215; R.S.1913, § 7160; C.S.1922, § 6806; C.S.1929, § 80-109; R.S.1943, § 80-106; Laws 1969, c. 752, § 4, p. 2832; Laws 2005, LB 54, § 24.

#### **80-107 Veterans graves, markers; furnish, when.**

(1) The county boards of the several counties in this state shall, upon the application of the county veterans service committee, procure for and furnish to such committee some suitable and appropriate metal marker for the grave of each and every person described in subsection (2) of this section, to be placed on the grave of such soldier for the purpose of permanently marking and designating the grave for memorial purposes.

(2) A grave shall be marked pursuant to this section if the deceased person:

(a) Served in the armed forces of the United States during a period of war as defined in section 80-401.01 or during a period of actual hostilities in any war or conflict in which the United States Government was engaged prior to April 6, 1917;

(b) Was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions); and

(c) Is buried within the county.

**Source:** Laws 1909, c. 135, § 1, p. 483; R.S.1913, § 7161; C.S.1922, § 6807; C.S.1929, § 80-110; R.S.1943, § 80-107; Laws 1953, c. 324, § 6, p. 1073; Laws 2005, LB 54, § 25.

#### **80-108 Veterans graves; petition for markers.**

In all petitions to the county boards the petitioners shall state the names of veterans buried and the number of such graves in the townships, precincts or municipalities at the time of petitioning.

**Source:** Laws 1909, c. 135, § 2, p. 484; R.S.1913, § 7162; C.S.1922, § 6808; C.S.1929, § 80-111; R.S.1943, § 80-108; Laws 1969, c. 752, § 5, p. 2832.

**80-109 Repealed. Laws 1959, c. 423, § 2.**

**80-110 Repealed. Laws 1980, LB 741, § 1.**

**80-111 Repealed. Laws 1997, LB 396, § 28.**

## ARTICLE 2 MEMORIALS

### Section

80-201. Memorials; authority to erect.

80-202. Memorials; erection; plans; publication; tax authorized; limitation.

80-203. Memorials; ordinance to erect; referendum; effect.

80-204. Memorial; erection; initiative petition; effect.

80-205. Elections; laws governing.

80-206. POW/MIA flag; display; when; conditions.

### **80-201 Memorials; authority to erect.**

All counties, townships, cities, and villages of Nebraska may erect or aid in the erection of statues, monuments, or other memorials commemorating the services of the members of the armed forces of the Civil, Spanish-American, or World Wars or the Korean or Vietnam conflict, to be located upon the public lands or within the public buildings within such county, township, city, or village.

**Source:** Laws 1919, c. 254, § 1, p. 1031; C.S.1922, § 6812; C.S.1929, § 80-201; R.S.1943, § 80-201; Laws 1987, LB 626, § 1.

### **80-202 Memorials; erection; plans; publication; tax authorized; limitation.**

The board of supervisors or commissioners of any county, the electors of any township at the annual or special township meeting, or the commissioners, council, or trustees of any city or village may by proper resolution, motion, or ordinance decide to erect or aid in the erection of any such statue, monument, or other memorial. Such resolution, motion, or ordinance shall specify the general features and plan of such statue, monument, or other memorial, the proposed location, the probable cost, and the amount thereof to be paid by such county, township, city, or village. The resolution, motion, or ordinance shall thereafter be published once in the official paper of the county, city, or village, and twenty days after the publication date of the publication, the proper authorities may levy a tax, in addition to the taxes otherwise authorized to be levied upon the taxable property of such county, township, city, or village, to pay the amount so to be paid by such county, township, city, or village, in like manner as general taxes are levied, or to pay such amount from the general fund. The levy shall be subject to sections 77-3442 and 77-3443.

**Source:** Laws 1919, c. 254, § 2, p. 1031; C.S.1922, § 6813; C.S.1929, § 80-202; R.S.1943, § 80-202; Laws 1996, LB 1114, § 68; Laws 1997, LB 269, § 63; Laws 1998, LB 306, § 45.

### **80-203 Memorials; ordinance to erect; referendum; effect.**

No money shall be so raised or expended, as provided in section 80-202, until the expiration of twenty days after the passage or adoption of such resolution, motion, or ordinance authorizing the same, and if within that time a petition shall be filed with said supervisors or commissioners of the county, or the

commissioners, council or trustees of the city or village, signed by fifteen percent of the legal voters of said county, city or village, asking that such proposition be submitted to a vote of the people, then such proposition shall be submitted to the vote of the people of the county, city or village and shall not become effective until it shall have been approved by a majority of those voting thereon at the next general, special, city or village election held more than thirty days after the filing of said petition.

**Source:** Laws 1919, c. 254, § 3, p. 1032; C.S.1922, § 6814; C.S.1929, § 80-203; R.S.1943, § 80-203.

**80-204 Memorial; erection; initiative petition; effect.**

Whenever there shall be filed with any board of supervisors or commissioners of the county, or the commissioners, council or trustees of the city or village, a petition signed by ten percent of the voters of such county, city or village asking for the erection, or aid for the erection, of any such statue, monument or other memorial, and describing the same as hereinbefore set forth, the supervisors or commissioners of the county, or the commissioners, council or trustees of the city or village shall without delay proceed therewith, subject to the referendum petition of fifteen percent of the voters as provided in section 80-203, or shall without delay provide for the submission of such proposition to a vote of the people at the next general, special, city or village election occurring not less than thirty days after the filing of such petition, and if, when so submitted, it shall be approved by a majority of those voting on such proposition, it shall be proceeded with.

**Source:** Laws 1919, c. 254, § 4, p. 1032; C.S.1922, § 6815; C.S.1929, § 80-204; R.S.1943, § 80-204.

**80-205 Elections; laws governing.**

Propositions submitted to a vote of the people under sections 80-203 and 80-204 shall be submitted in like manner on the ballot as under the general initiative and referendum law.

**Source:** Laws 1919, c. 254, § 5, p. 1032; C.S.1922, § 6816; C.S.1929, § 80-205; R.S.1943, § 80-205.

**80-206 POW/MIA flag; display; when; conditions.**

(1) Upon the request of any veterans organization, any other group, or any person, a POW/MIA flag may be displayed on or near the State Capitol, the Governor's Mansion, or any courthouse, city or village hall, schoolhouse, or other public administrative building in this state. Such flag shall be displayed in accordance with accepted flag protocol.

(2) The organization, group, or person making such request shall purchase and maintain the POW/MIA flag.

(3) For purposes of this section, a POW/MIA flag shall mean a flag recognized and accepted by internationally recognized veterans organizations as memorializing prisoners of war and persons declared missing in action as a result of military service.

**Source:** Laws 1991, LB 313, § 3.

**ARTICLE 3**  
**NEBRASKA VETERANS HOMES**

Cross References

**Administrator**, qualifications, see section 80-325.  
**Basic workweek**, qualifications, see Chapter 84, article 10.  
**Management by Department of Health and Human Services**, see section 83-108.  
**Material administrator to make purchases for**, see section 83-140.  
**Official names of state institutions**, see section 83-107.01.

Section

- 80-301. Transferred to section 80-315.
- 80-301.01. Repealed. Laws 1994, LB 1194, § 21.
- 80-301.02. Transferred to section 80-326.
- 80-302. Transferred to section 80-317.
- 80-303. Repealed. Laws 1969, c. 753, § 3.
- 80-304. Transferred to section 80-314.
- 80-304.01. Transferred to section 80-327.
- 80-305. Transferred to section 80-318.
- 80-306. Transferred to section 80-319.
- 80-307. Transferred to section 80-320.
- 80-308. Transferred to section 80-321.
- 80-309. Transferred to section 80-331.
- 80-310. Repealed. Laws 1980, LB 184, § 13.
- 80-311. Transferred to section 80-328.
- 80-312. Transferred to section 80-329.
- 80-313. Transferred to section 80-330.
- 80-314. Division of Veterans' Homes; duties; Director of Veterans' Homes; rules and regulations.
- 80-315. Nebraska veterans homes; establishment.
- 80-316. Division of Veterans' Homes; purpose; admission; requirements.
- 80-317. Nebraska veterans homes; Veterans' Homes Board; rules of membership; application.
- 80-318. Veterans' Homes Board; members; appointment; compensation; expenses.
- 80-319. Veterans' Homes Board; duties; powers; meetings.
- 80-320. Director of Veterans' Homes; rules and regulations.
- 80-321. Member; payment for care; public expense.
- 80-322. Reimbursement of costs.
- 80-323. Repealed. Laws 2002, LB 93, § 27.
- 80-324. Repealed. Laws 2002, LB 93, § 27.
- 80-325. Administrator of Nebraska veterans homes; qualifications.
- 80-326. Veterans' Home Building Fund; created; purposes; investment.
- 80-327. Nebraska veterans homes; member; disability; guardianship proceedings; guardian or conservator; fees; bond.
- 80-328. State of Nebraska; enter into lease agreement with Douglas County; property; described; use as a veterans home.
- 80-329. County board; lease or sell property for use as a veterans home; terms.
- 80-330. Property used as a veterans home; utility service; state provide; how compensated.
- 80-331. Norfolk Veterans' Home.

**80-301 Transferred to section 80-315.**

**80-301.01 Repealed. Laws 1994, LB 1194, § 21.**

**80-301.02 Transferred to section 80-326.**

**80-302 Transferred to section 80-317.**

**80-303 Repealed. Laws 1969, c. 753, § 3.**

**80-304 Transferred to section 80-314.**

**80-304.01 Transferred to section 80-327.**

**80-305 Transferred to section 80-318.**

**80-306 Transferred to section 80-319.**

**80-307 Transferred to section 80-320.**

**80-308 Transferred to section 80-321.**

**80-309 Transferred to section 80-331.**

**80-310 Repealed. Laws 1980, LB 184, § 13.**

**80-311 Transferred to section 80-328.**

**80-312 Transferred to section 80-329.**

**80-313 Transferred to section 80-330.**

**80-314 Division of Veterans' Homes; duties; Director of Veterans' Homes; rules and regulations.**

The Division of Veterans' Homes shall be responsible for the management and administration of the homes and the treatment of the members thereof, define the duties of the officers, fix their compensation, and adopt and promulgate rules and regulations. The Director of Veterans' Homes and the Director of Veterans' Affairs shall jointly develop member grievance procedures, family support programs, volunteer support, policy, and internal standards. The Director of Veterans' Affairs shall have access to all confidential information relating to members' care.

**Source:** Laws 1887, c. 82, § 6, p. 626; Laws 1891, c. 49, § 3, p. 343; Laws 1893, c. 33, § 1, p. 361; Laws 1905, c. 145, § 2, p. 586; R.S.1913, § 7305; C.S.1922, § 6960; Laws 1923, c. 183, § 1, p. 424; C.S. 1929, § 80-304; R.S.1943, § 80-304; Laws 1949, c. 272, § 3(1), p. 893; Laws 1959, c. 420, § 2, p. 1416; Laws 1980, LB 184, § 3; Laws 1996, LB 1044, § 831; R.S.1943, (1996), § 80-304; Laws 1997, LB 396, § 3; Laws 2007, LB296, § 718.

Enactment of rule which requires inmates of soldiers' home to pay a percentage of pension money for benefit of home is within discretionary power of Board of Control. *Howell v. Sheldon*, 82 Neb. 72, 117 N.W. 109 (1908).

### **80-315 Nebraska veterans homes; establishment.**

(1) The Grand Island Veterans' Home, the Norfolk Veterans' Home, the Thomas Fitzgerald Veterans' Home, and the Western Nebraska Veterans' Home are established. On July 1, 2007, the Eastern Nebraska Veterans' Home is established. The State of Nebraska shall maintain the homes as provided in sections 80-314 to 80-331.

(2) The veterans' home known as the Thomas Fitzgerald Veterans' Home as of July 14, 2006, shall continue to be known by that name until July 1, 2007. On and after July 1, 2007, the veterans' home shall be known as the Eastern Nebraska Veterans' Home.

**Source:** Laws 1887, c. 82, § 1, p. 622; Laws 1889, c. 85, § 1, p. 569; Laws 1891, c. 49, § 1, p. 340; Laws 1901, c. 71, § 1, p. 458; R.S.1913, § 7302; Laws 1919, c. 157, § 1, p. 354; C.S.1922, § 6957; C.S.

1929, § 80-301; Laws 1931, c. 153, § 1, p. 412; Laws 1935, c. 172, § 1, p. 627; C.S.Supp.,1941, § 80-301; Laws 1943, c. 211, § 1, p. 696; R.S.1943, § 80-301; Laws 1949, c. 272, § 1, p. 891; Laws 1953, c. 325, § 1, p. 1075; Laws 1959, c. 421, § 1, p. 1417; Laws 1969, c. 753, § 1, p. 2833; Laws 1969, c. 584, § 93, p. 2402; Laws 1971, LB 334, § 1; Laws 1973, LB 33, § 1; Laws 1975, LB 90, § 2; Laws 1979, LB 80, § 112; Laws 1980, LB 184, § 1; Laws 1981, LB 351, § 1; Laws 1991, LB 2, § 23; Laws 1994, LB 1066, § 95; Laws 1994, LB 1194, § 16; R.S.1943, (1996), § 80-301; Laws 1997, LB 396, § 4; Laws 2006, LB 994, § 110.

**80-316 Division of Veterans' Homes; purpose; admission; requirements.**

(1) The purpose of the Division of Veterans' Homes of the Department of Health and Human Services is to provide domiciliary and nursing home care and subsistence to:

(a) All persons who served on active duty in the armed forces of the United States other than active duty for training and who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) if, at the time of making an application for admission to one of the Nebraska veterans homes:

(i) The applicant has been a bona fide resident of the State of Nebraska for at least two years;

(ii) The applicant has become disabled due to service, old age, or otherwise to an extent that it would prevent such applicant from earning a livelihood; and

(iii) The applicant's income from all sources is such that the applicant would be dependent wholly or partially upon public charities for support or the type of care needed is available only at a state institution;

(b) The spouse of any such person admitted to one of the homes who has attained the age of fifty years and has been married to such member for at least two years before his or her entrance into the home;

(c) Subject to subsection (2) of this section, the surviving spouses and parents of eligible servicemen and servicewomen as defined in subdivision (a) of this subsection who died while in the service of the United States or who have since died of a service-connected disability as determined by the United States Department of Veterans Affairs; and

(d) Subject to subsection (2) of this section, the surviving spouses of eligible servicemen or servicewomen as defined in subdivision (a) of this subsection who have since died.

(2) The surviving spouses and parents referred to in subdivision (1)(c) or (d) of this section shall be eligible for such care and subsistence if, at the time of applying, they:

(a) Have been bona fide residents of the State of Nebraska for at least two years;

(b) Have attained the age of fifty years;

(c) Are unable to earn a livelihood; and

(d) Are dependent wholly or partially upon public charities or the type of care needed is available only at a state institution.

(3) No one admitted to one of the Nebraska veterans homes under conditions enumerated in this section shall have a vested right to continued residence in such home if such person ceases to meet any of the eligibility requirements of this section, except that no person who has been regularly admitted shall be denied continued residence solely because of his or her marriage to a member of one of the homes.

**Source:** Laws 1997, LB 396, § 5; Laws 2005, LB 54, § 26; Laws 2007, LB296, § 719; Laws 2009, LB488, § 1.

**80-317 Nebraska veterans homes; Veterans' Homes Board; rules of membership; application.**

The Veterans' Homes Board shall prescribe rules of membership in the Nebraska veterans homes in accordance with sections 80-314 to 80-331. An application for membership in a Nebraska veterans home shall be made to a county veterans service officer, to a recognized veterans organization as defined in subdivision (1) of section 80-401.01, or to a Nebraska veterans home, and such officer, organization, or Nebraska veterans home shall coordinate the required financial and medical information and, if necessary, provide an opinion regarding its validity. The county veterans service officer, recognized veterans organization, or Nebraska veterans home shall at once forward the application together with a finding in regard to the condition of the applicant to the board, whose duty it is to receive, review, and act upon applications for membership. During the interim between meetings of the board, the secretary of the board is authorized to adjudicate applications, subject to the approval of the full board at its next meeting.

**Source:** Laws 1887, c. 82, § 1, p. 622; Laws 1889, c. 85, § 1, p. 569; Laws 1891, c. 49, § 1, p. 340; Laws 1901, c. 71, § 1, p. 458; R.S.1913, § 7302; Laws 1919, c. 157, § 1, p. 354; C.S.1922, § 6957; C.S. 1929, § 80-301; Laws 1931, c. 153, § 1, p. 412; Laws 1935, c. 172, § 1, p. 627; C.S.Supp.,1941, § 80-301; Laws 1943, c. 211, § 1, p. 696; R.S.1943, § 80-301; Laws 1949, c. 272, § 1, p. 891; Laws 1953, c. 325, § 1, p. 1075; Laws 1959, c. 421, § 1, p. 1417; Laws 1969, c. 753, § 1, p. 2833; Laws 1969, c. 584, § 93, p. 2402; Laws 1971, LB 334, § 1; Laws 1973, LB 33, § 1; Laws 1975, LB 90, § 2; Laws 1980, LB 184, § 2; Laws 1995, LB 64, § 1; R.S.1943, (1996), § 80-302; Laws 1997, LB 396, § 6; Laws 2007, LB296, § 720; Laws 2012, LB795, § 1.

**Cross References**

For official name of homes, see section 83-107.01.

**80-318 Veterans' Homes Board; members; appointment; compensation; expenses.**

For the purpose of determining continued eligibility of members to remain in one of the Nebraska veterans homes and for the purpose of recommending matters of policy, rules and regulations, administration, and maintenance pertaining to each of the Nebraska veterans homes, the Veterans' Homes Board is established. The board shall be composed of two members selected by each of the recognized veterans organizations in Nebraska identified in subdivision (1) of section 80-401.01, and the Director of Veterans' Affairs who shall serve as the permanent board secretary. Such members shall be selected in the manner

and serve for such term as the veterans organization may prescribe. If a member selected by any such veterans organization is unavailable to attend a meeting of the board or unable to serve for any reason, the incumbent department commander of such organization may appoint some other member of his or her organization to serve on the board. The chairperson shall be selected from among the members of the board. No salary shall be paid to any member of the board, but actual expenses of the members of the board when attending regularly called meetings of that board shall be paid as provided in sections 81-1174 to 81-1177 from the administrative funds of the Department of Veterans' Affairs.

**Source:** Laws 1949, c. 272, § 4(1), p. 893; Laws 1951, c. 300, § 1, p. 989; Laws 1979, LB 271, § 1; Laws 1980, LB 184, § 5; Laws 1981, LB 204, § 165; Laws 1982, LB 564, § 1; R.S.1943, (1996), § 80-305; Laws 1997, LB 396, § 7; Laws 2005, LB 54, § 27; Laws 2007, LB296, § 721.

#### **80-319 Veterans' Homes Board; duties; powers; meetings.**

The Veterans' Homes Board shall meet at least quarterly and at other times at the request of either the chairperson or the secretary of the board at a site selected by the secretary after consultation with the chairperson. The board shall review all applications submitted for admission to the Nebraska veterans homes system and shall make all final determinations regarding admission, or continued admission, to one of the homes. The board may check periodically on members of the Nebraska veterans homes to determine whether or not their physical or financial status has so changed since admission that they should no longer be maintained there. The board has power to subpoena witnesses and take testimony under oath relative to the duties of the board. No specified amount, either as to income or accumulated reserve, shall be arbitrarily fixed for determining the eligibility of an applicant to membership or to continuing rights of membership, but each case shall be considered solely on its merits and the evidence presented. The Division of Veterans' Homes shall consult with the board prior to denying further residence to members the board finds should no longer be supported there.

**Source:** Laws 1949, c. 272, § 4(2), p. 894; Laws 1953, c. 325, § 2, p. 1076; Laws 1971, LB 334, § 3; Laws 1980, LB 184, § 6; Laws 1996, LB 1044, § 832; R.S.1943, (1996), § 80-306; Laws 1997, LB 396, § 8; Laws 2007, LB296, § 722.

#### **80-320 Director of Veterans' Homes; rules and regulations.**

Nothing in sections 80-314 to 80-331 shall be construed as limiting the authority vested with the Director of Veterans' Homes to adopt and promulgate rules and regulations, not inconsistent herewith, for the administration of the Nebraska veterans homes. The Department of Health and Human Services, in conjunction and after consultation with the Veterans' Homes Board, shall adopt and promulgate rules and regulations governing admission to and administration of the homes.

**Source:** Laws 1909, c. 134, § 1, p. 482; R.S.1913, § 7306; C.S.1922, § 6961; C.S.1929, § 80-305; R.S.1943, § 80-305; Laws 1949, c.

272, § 4(3), p. 894; Laws 1953, c. 325, § 3, p. 1077; Laws 1980, LB 184, § 7; Laws 1996, LB 1044, § 833; R.S.1943, (1996), § 80-307; Laws 1997, LB 396, § 9; Laws 2007, LB296, § 723.

**80-321 Member; payment for care; public expense.**

Nothing in sections 80-314 to 80-331 shall be construed to deny any person who has been properly admitted to one of the Nebraska veterans homes the privilege of paying the cost of his or her care, or any part thereof, if he or she so desires or if it has been determined by the Veterans' Homes Board that his or her financial status is such that he or she should no longer be maintained there at public expense.

**Source:** Laws 1891, c. 49, § 7, p. 346; Laws 1909, c. 134, § 1, p. 482; R.S.1913, § 7306; C.S.1922, § 6961; C.S.1929, § 80-305; R.S. 1943, § 80-305; Laws 1949, c. 272, § 5, p. 895; Laws 1971, LB 334, § 4; Laws 1980, LB 184, § 8; R.S.1943, (1996), § 80-308; Laws 1997, LB 396, § 10; Laws 2007, LB296, § 724.

**80-322 Reimbursement of costs.**

Any veteran, spouse, surviving spouse, or parent admitted to one of the Nebraska veterans homes under section 80-316 who has an income in excess of forty dollars per month, including federal pension, compensation, or social security, or has sufficient assets will be required to reimburse the state monthly a reasonable amount for the expense of his or her maintenance. The amount shall be determined by the Veterans' Homes Board. All money paid to the state by members of the Nebraska veterans homes in compliance with this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

**Source:** Laws 1997, LB 396, § 11; Laws 2007, LB296, § 725.

**80-323 Repealed. Laws 2002, LB 93, § 27.**

**80-324 Repealed. Laws 2002, LB 93, § 27.**

**80-325 Administrator of Nebraska veterans homes; qualifications.**

The administrator of the Nebraska veterans homes shall be a licensed nursing home administrator licensed under the Nursing Home Administrator Practice Act. Qualified applicants for the position of administrator who were discharged or otherwise separated with a characterization of honorable from the armed forces of the United States during a period of war as defined in section 80-401.01 shall be given a preference over other applicants.

**Source:** Laws 1913, c. 179, § 11, p. 538; R.S.1913, § 7189; Laws 1917, c. 131, § 1, p. 312; Laws 1921, c. 200, § 1, p. 722; C.S.1922, § 6840; C.S.1929, § 83-111; Laws 1935, c. 185, § 2, p. 685; C.S.Supp.,1941, § 83-111; R.S.1943, § 83-124; Laws 1947, c. 329, § 1, p. 1045; Laws 1951, c. 320, § 1, p. 1092; Laws 1953, c. 340, § 1, p. 1113; Laws 1969, c. 817, § 71, p. 3107; Laws 1971, LB 334, § 5; R.S.1943, (1994), § 83-124; Laws 1997, LB 396, § 14; Laws 2001, LB 10, § 1; Laws 2005, LB 54, § 28; Laws 2007, LB463, § 1310.

## Cross References

Nursing Home Administrator Practice Act, see section 38-2401.

**80-326 Veterans' Home Building Fund; created; purposes; investment.**

The Veterans' Home Building Fund is created. The fund shall include money allocated to the fund. The fund shall be used, along with matching federal funds available, for the specific purposes of adding or improving nursing facilities when needed. 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 315, § 2; Laws 1990, LB 1216, § 1; Laws 1994, LB 1194, § 17; Laws 1995, LB 7, § 94; R.S.1943, (1996), § 80-301.02; Laws 1997, LB 396, § 15.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**80-327 Nebraska veterans homes; member; disability; guardianship proceedings; guardian or conservator; fees; bond.**

Whenever a member of one of the Nebraska veterans homes becomes disabled because of age or otherwise to such an extent that it is impossible for the member to transact his or her personal financial business, the administrator of such home may institute, in the administrator's official capacity, proceedings for the legal appointment of a guardian or conservator to take charge of and administer all funds, whether pension, compensation, or otherwise, inuring to the member. A member of the staff of each home shall be named guardian officer of that home and may be appointed guardian or conservator of members of such home. The guardian officer shall not receive fees or compensation from the member for such services. Bond for the guardian officer shall be paid by the State of Nebraska.

**Source:** Laws 1949, c. 272, § 3(2), p. 893; Laws 1959, c. 420, § 3, p. 1416; Laws 1971, LB 335, § 3; Laws 1980, LB 184, § 4; Laws 1995, LB 12, § 1; R.S.1943, (1996), § 80-304.01; Laws 1997, LB 396, § 16.

**80-328 State of Nebraska; enter into lease agreement with Douglas County; property; described; use as a veterans home.**

The Legislature hereby approves and recommends to the Governor that the State of Nebraska enter into a lease agreement with Douglas County, Nebraska, relating to land and buildings located in Douglas County, Nebraska, for use as a veterans home. Such land and buildings shall include two parcels of land being part of the northwest quarter of the northwest quarter of section 11, township 15 north, range 11 east of the 6th principal meridian, Douglas County, Nebraska, and being more particularly described as follows:

(1) Commencing at the northeast corner of the northwest quarter of the northwest quarter of said section 11; thence south zero degrees two minutes thirty-six seconds for a distance of thirty-three feet to the point of beginning; thence continuing south zero degrees two minutes thirty-six seconds west for a distance of nine hundred sixty-six and seventy-five hundredths feet; thence north eighty-nine degrees fifty-seven minutes twenty-four seconds west for a distance of two hundred fifteen and seven-tenths feet; thence south zero degrees

two minutes thirty-six seconds west for a distance of twenty-nine feet; thence north eighty-nine degrees fifty-seven minutes twenty-four seconds west for a distance of four hundred ninety-nine and sixty-five hundredths feet; thence north zero degrees two minutes thirty-six seconds east for a distance of nine hundred ninety-three and seventy-five hundredths feet; thence north eighty-nine degrees fifty-three minutes one second east for a distance of seven hundred fifteen and thirty-four hundredths feet to the point of beginning, containing sixteen and nineteen-hundredths acres, more or less; and

(2) Commencing at the southwest corner of the northwest quarter of the northwest quarter of said section 11; thence north eighty-nine degrees fifty minutes fifty-six seconds east for a distance of one hundred sixty-eight and seventy-five hundredths feet to the point of beginning; thence north zero degrees zero minutes zero seconds east for a distance of seventy-three feet; thence north eighty-nine degrees fifty minutes fifty-six seconds east for a distance of one hundred five and fifty-three hundredths feet; thence south zero degrees zero minutes zero seconds east for a distance of seventy-three feet; thence south eighty-nine degrees fifty minutes fifty-six seconds west for a distance of one hundred five and fifty-three hundredths feet to the point of beginning, containing eighteen-hundredths acre, more or less.

**Source:** Laws 1980, LB 184, § 9; R.S.1943, (1996), § 80-311; Laws 1997, LB 396, § 17.

**80-329 County board; lease or sell property for use as a veterans home; terms.**

Any county board may lease or sell public property to the state for use as a veterans home at such rent and under such terms and conditions as it may deem just and advisable, notwithstanding the fact that such lease or sale is at less than the fair market value of such property.

**Source:** Laws 1980, LB 184, § 11; R.S.1943, (1996), § 80-312; Laws 1997, LB 396, § 18.

**80-330 Property used as a veterans home; utility service; state provide; how compensated.**

If the state provides utility service to Douglas County in connection with the lease of land and buildings located in Douglas County, Nebraska, for use as a veterans home by the state, Douglas County shall provide the state with fair and equitable compensation for the services provided.

**Source:** Laws 1980, LB 184, § 12; R.S.1943, (1996), § 80-313; Laws 1997, LB 396, § 19.

**80-331 Norfolk Veterans' Home.**

There is hereby established near Norfolk, Nebraska, on the site of the Norfolk Regional Center and further described as follows:

Beginning at a point located approximately one thousand nine hundred twenty feet east of, and approximately nine hundred sixty feet south of the northwest corner of section thirteen, township twenty-four north, range one west in Madison County and thence five hundred feet south along the west curb line of Service Street, thence five hundred feet west, thence five hundred feet north, thence five hundred feet east to the place of beginning; and building

number twenty-three located approximately six hundred ninety feet south and three hundred ninety-five feet east of the southeast corner of the above described lot; a facility to be known as the Norfolk Veterans' Home.

**Source:** Laws 1963, c. 496, § 1, p. 1586; Laws 1972, LB 1246, § 1; R.S.1943, (1996), § 80-309; Laws 1997, LB 396, § 20.

## ARTICLE 4 VETERANS AID

### Cross References

Aid fund for veterans, county, see section 80-102.

#### Section

- 80-401. Nebraska Veterans' Aid Fund; Veterans' Aid Income Fund; created; purpose; investment; management.
- 80-401.01. Terms, defined.
- 80-401.02. Department of Veterans' Affairs; creation; director; qualifications; salary; bond or insurance; service officers and assistants; appointment.
- 80-401.03. Director; duties; assistants; state service office.
- 80-401.04. Department of Veterans' Affairs; jurisdiction; State Department of Education; functions.
- 80-401.05. Comprehensive Health Insurance Pool; board of directors; Department of Insurance; duties.
- 80-401.06. Veterans' Advisory Commission; members; appointment; qualifications.
- 80-401.07. Veterans' Advisory Commission; members; tenure of office.
- 80-401.08. Veterans' Advisory Commission; members; chairperson; expenses.
- 80-401.09. Veterans' Advisory Commission; duties; meetings.
- 80-401.10. Director; seal; adopt; rules and regulations; fiscal year.
- 80-401.11. Department of Veterans' Affairs; offices; employees.
- 80-401.12. Repealed. Laws 1967, c. 402, § 1.
- 80-402. Veterans aid; conscientious objectors denied relief.
- 80-403. Veterans relief; persons eligible; disbursements.
- 80-404. Gifts, power to accept; property, exemption from tax.
- 80-404.01. Repealed. Laws 1953, c. 326, § 5.
- 80-404.02. Repealed. Laws 1953, c. 326, § 5.
- 80-404.03. Repealed. Laws 1953, c. 326, § 5.
- 80-404.04. Commissioner of Education; federal funds; disbursement.
- 80-405. Veterans relief; obtaining by fraud; penalty.
- 80-406. County service committee; members; appointment.
- 80-407. County veterans service committee; duties; appointment of county veterans service officer; member of committee ineligible.
- 80-408. County veterans service officer; officers and employees; oath; bond.
- 80-409. County service committee; offices; tax; levy.
- 80-410. Director; Veterans' Advisory Commission; state and county veterans service officers; employees; qualifications.
- 80-411. Waiver of tuition and fees at institutions of higher education; qualifications; application; Director of Veterans' Affairs; approval; effect.
- 80-412. Graves; Director of Veterans' Affairs; permanent registry.
- 80-413. Land used for veterans services; retrocession of jurisdiction.
- 80-414. Department of Veterans' Affairs; create and maintain registry; contents; notation of "veteran" on operator's license or state identification card; eligibility.

**80-401 Nebraska Veterans' Aid Fund; Veterans' Aid Income Fund; created; purpose; investment; management.**

(1) There is hereby established a fund to be known as the Nebraska Veterans' Aid Fund. The Nebraska Investment Council is directed to purchase bonds or notes issued by the government of the United States or the State of Nebraska,

or any county, school district, or municipality therein, with a face value of twelve million dollars, as of August 1, 1984, to carry out sections 80-401 to 80-405 and to place them in the custody and control of the State Treasurer of the State of Nebraska under the same conditions as other state money.

(2) Such fund shall be managed as follows: (a) When necessary to pay a premium for bonds for such fund, the amount of the premium shall be amortized over the term of the bonds from the interest received on such bonds; and (b) when bonds for such fund are purchased at a discount, the amount of the discount shall be used to purchase additional bonds, it being contemplated that the face amount of the bonds in such fund may in this manner aggregate in excess of twelve million dollars at some future time.

(3) The interest on the Nebraska Veterans' Aid Fund, except so much as may be required for amortization of premium bond purchases as authorized in this section and so much as may be required to pay a pro rata share of the budget appropriated for the Nebraska Investment Council pursuant to section 72-1249.02, shall be paid to the Veterans' Aid Income Fund, which fund is hereby created. The Veterans' Aid Income Fund, when appropriated by the Legislature, shall be available to the Director of Veterans' Affairs for aid to needy veterans as authorized by law.

(4) The Nebraska Investment Council shall manage the Nebraska Veterans' Aid Fund, with investment and reinvestment to be made in the same type securities authorized for investment of funds by the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The director shall advise the Nebraska Investment Council when amounts in the Veterans' Aid Income Fund are not immediately required for aid to needy veterans. The state investment officer shall invest such amounts available from the Veterans' Aid Income Fund in the same manner as investments of the Nebraska Veterans' Aid Fund, and the interest thereon shall also become a part of the Veterans' Aid Income Fund.

**Source:** Laws 1921, c. 40, § 1, p. 181; C.S.1922, § 6206; Laws 1923, c. 126, § 1, p. 311; Laws 1927, c. 194, § 1, p. 552; C.S.1929, § 80-401; R.S.1943, § 80-401; Laws 1945, c. 221, § 1, p. 659; Laws 1947, c. 306, § 1, p. 926; Laws 1951, c. 301, § 1, p. 990; Laws 1959, c. 422, § 1, p. 1419; Laws 1967, c. 486, § 44, p. 1531; Laws 1969, c. 584, § 94, p. 2404; Laws 1975, LB 234, § 1; Laws 1976, LB 867, § 1; Laws 1978, LB 733, § 1; Laws 1981, LB 157, § 1; Laws 1982, LB 255, § 1; Laws 1984, LB 38, § 1; Laws 1987, LB 786, § 2; Laws 1995, LB 7, § 95; Laws 2013, LB263, § 29.

#### Cross References

Board of Educational Lands and Funds, authorized investments, see sections 8-712, 46-567.04, and 72-202.

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **80-401.01 Terms, defined.**

For purposes of sections 80-401 to 80-412, unless the context otherwise requires:

(1) Recognized veterans organization means the American Legion, the American Ex-Prisoners of War, the Disabled American Veterans, the Military Order of the Purple Heart, the Paralyzed Veterans of America, the Veterans of Foreign Wars of the United States, the Vietnam Veterans of America, and any other

veterans organization which the Director of Veterans' Affairs determines (a) is recognized by the United States Department of Veterans Affairs for claims representation, (b) has a presence in each of this state's congressional districts, and (c) maintains a state headquarters sanctioned by its national organization;

(2) Veteran of the Spanish-American War means a person who served on active duty in the armed forces of the United States between April 21, 1898, and July 4, 1902, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(3) Veteran of World War I means a person who served on active duty in the armed forces of the United States between April 6, 1917, and November 11, 1918, or who, being a resident of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(4) Veteran of World War II means a person who served on active duty in the armed forces of the United States between December 7, 1941, and December 31, 1946, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(5) Veteran of the Korean War means a person who served on active duty in the armed forces of the United States between June 25, 1950, and January 31, 1955, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(6) Veteran of the Vietnam War means a person (a) who served on active duty in the armed forces of the United States (i) between August 5, 1964, and May 7, 1975, or (ii) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, and (b) who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(7) Veteran of Lebanon means a person who served on active duty in the armed forces of the United States between August 25, 1982, and February 26, 1984, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(8) Veteran of Grenada means a person who served on active duty in the armed forces of the United States between October 23, 1983, and November 23, 1983, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(9) Veteran of Panama means a person who served on active duty in the armed forces of the United States between December 20, 1989, and January 31, 1990, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(10) Veteran of the Persian Gulf War means a person who served on active duty in the armed forces of the United States beginning on August 2, 1990, and ending on the date thereafter prescribed by presidential proclamation or by law, or who, being a citizen of the United States at the time of his or her entry

into such service, served with the military forces of any government allied with the United States in that war;

(11) Veteran of the Global War on Terror means a person who served on active duty in the armed forces of the United States beginning on September 14, 2001, and ending on the date thereafter prescribed by presidential proclamation or by law, or who, being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States in that war;

(12) Active duty means full-time duty in the armed forces other than active duty for training; and

(13) Active duty for training means full-time duty in the armed forces performed by reserves for training purposes.

**Source:** Laws 1947, c. 306, § 2, p. 927; Laws 1951, c. 302, § 1, p. 993; Laws 1955, c. 328, § 1, p. 1024; Laws 1967, c. 562, § 1, p. 1853; Laws 1967, c. 561, § 2, p. 1849; Laws 1969, c. 754, § 1, p. 2835; Laws 1974, LB 621, § 1; Laws 1975, LB 90, § 3; Laws 1978, LB 571, § 1; Laws 1981, LB 221, § 1; Laws 1985, LB 49, § 1; Laws 1987, LB 626, § 2; Laws 1990, LB 857, § 1; Laws 1991, LB 720, § 1; Laws 1992, LB 835, § 4; Laws 1993, LB 2, § 1; Laws 1994, LB 241, § 1; Laws 2001, LB 368, § 2; Laws 2003, LB 799, § 1; Laws 2005, LB 54, § 29; Laws 2009, LB422, § 1.

**80-401.02 Department of Veterans' Affairs; creation; director; qualifications; salary; bond or insurance; service officers and assistants; appointment.**

There is hereby created a department of government to be known as the Department of Veterans' Affairs. The chief administrative officer of the department shall be the director to be known as the Director of Veterans' Affairs. He or she shall be appointed by the Governor, subject to confirmation by the Legislature. No person shall be eligible to receive appointment as director unless such person has the following qualifications: (1) Resident of the State of Nebraska for at least five years immediately prior to his or her appointment; (2) citizen of the United States; and (3) served in the armed forces of the United States during any of the periods identified in section 80-401.01 and discharged or otherwise separated with a characterization of honorable from such service. The director shall serve until a new director to succeed him or her is appointed and has qualified. If a vacancy occurs in the office of director when the Legislature is not in session, the Governor shall make a temporary appointment until the next meeting of the Legislature, when the Governor shall present to the Legislature a recommendation for the office. The director shall receive an annual salary to be fixed by the Governor, payable in equal monthly installments. He or she shall be entitled to the necessary and actual expenses involved in the performance of his or her official duties as provided in sections 81-1174 to 81-1177. He or she shall be bonded or insured as required by section 11-201. The director shall appoint state service officers and assistants, whose appointments shall be approved by the Veterans' Advisory Commission.

The department shall be the designated state agency to advocate on behalf of veterans.

**Source:** Laws 1947, c. 306, § 3, p. 928; Laws 1951, c. 303, § 2, p. 995; Laws 1957, c. 367, § 7, p. 1291; Laws 1959, c. 423, § 1, p. 1421; Laws 1961, c. 413, § 1, p. 1241; Laws 1965, c. 537, § 1, p. 1687;

Laws 1969, c. 754, § 2, p. 2837; Laws 1978, LB 653, § 29; Laws 1981, LB 204, § 166; Laws 1997, LB 396, § 21; Laws 2004, LB 884, § 38; Laws 2005, LB 54, § 30.

**Cross References**

**Constitutional provisions:**

Bonds of heads of executive departments, see Article IV, section 26, Constitution of Nebraska.

Executive department heads, appointment and removal, see Article IV, sections 1 and 12, Constitution of Nebraska.

Official oath of executive officers, see Article XV, section 1, Constitution of Nebraska.

Reports to Governor, see Article IV, sections 22 and 23, Constitution of Nebraska.

**Bond of director and assistants**, see Chapter 11 and section 81-111.

**Official oaths of office**, see sections 11-101 to 11-101.02 and 81-110.

**Qualifications of director and other personnel**, see section 80-410.

**State administrative departments**, general provisions, see Chapter 81, article 1.

**80-401.03 Director; duties; assistants; state service office.**

(1) The Director of Veterans' Affairs shall be responsible for the administration of the income funds from the Nebraska Veterans' Aid Fund for the aid of needy veterans and their dependents.

(2) The director, the deputy director, or a designee of the director shall receive and approve for payment or disapprove applications for aid which shall originate in any local post of any recognized veterans organization or with a county veterans service officer. Any person eligible for such aid shall make application for the same through such local post or county veterans service officer in the community nearest his or her place of residence. If there are two or more local posts of one or more recognized veterans organizations in any community, no claimant can originate a claim in more than one such post at any given time and a period of at least thirty days shall elapse between the filing of claims. An application shall not be deemed to be filed until it has been received and filed in the office of the Director of Veterans' Affairs. The director may adopt and promulgate such rules and regulations as may be necessary for administering such aid.

(3) No part of the interest accumulation of the Nebraska Veterans' Aid Fund shall be expended for the purpose of organizing and maintaining any veterans organization. There shall be expended under the direction of the director such sum or sums as may be specifically appropriated by the Legislature for the employment of necessary assistants or deputies and clerical employees at such reasonable compensation as may be fixed by the director in each particular case and for the maintenance and expenses of a state service office with necessary service officers and assistants to prepare and present meritorious cases of ex-servicemen and ex-servicewomen for benefits before the United States Department of Veterans Affairs. Such cases shall be accepted by the state service officer on behalf of any claimant when a proper power of attorney is given by such claimant to the office of the director or to a state service officer, if he or she is so designated by any recognized veterans organization as its sole representative, and regardless of where the cases originate. No part of such sum or sums is to be paid out of the twelve-million-dollar trust fund or the income therefrom. Upon the completion of the trust, the principal fund so held by the State Treasurer shall revert to the treasury of the state.

(4) For purposes of this section, veteran means any person who:

(a) Served on active duty in the armed forces of the United States, other than active duty for training, and who:

(i) Was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from such service; or

(ii) Died while in service or as a direct result of such service; or

(b) Being a citizen of the United States at the time of his or her entry into such service, served with the military forces of any government allied with the United States during any period identified in section 80-401.01 and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions).

**Source:** Laws 1947, c. 306, § 4, p. 928; Laws 1951, c. 304, § 1, p. 997; Laws 1951, c. 301, § 2, p. 991; Laws 1953, c. 326, § 1, p. 1078; Laws 1963, c. 497, § 1, p. 1587; Laws 1967, c. 563, § 1, p. 1856; Laws 1969, c. 754, § 3, p. 2838; Laws 1969, c. 755, § 1, p. 2843; Laws 1985, LB 49, § 2; Laws 1991, LB 2, § 24; Laws 1997, LB 441, § 1; Laws 2002, LB 977, § 1; Laws 2005, LB 54, § 31.

#### Cross References

#### Constitutional provisions:

Bonds of heads of executive departments, see Article IV, section 26, Constitution of Nebraska.

Executive department heads, appointment and removal, see Article IV, sections 1 and 12, Constitution of Nebraska.

Official oath of executive officers, see Article XV, section 1, Constitution of Nebraska.

Reports to Governor, see Article IV, sections 22 and 23, Constitution of Nebraska.

**Adoption and promulgation of rules and regulations**, see Chapter 84, article 9.

**Bond of director and assistants**, see Chapter 11 and section 81-111.

**Official oaths of office**, see sections 11-101 to 11-101.02 and 81-110.

**Qualifications of director and other personnel**, see section 80-410.

**State administrative departments**, general provisions, see Chapter 81, article 1.

### **80-401.04 Department of Veterans' Affairs; jurisdiction; State Department of Education; functions.**

The Department of Veterans' Affairs shall have jurisdiction over the administration and supervision of all phases of activities under the on-the-job and apprenticeship training, on-the-farm training, and flight training programs for veterans carried on pursuant to Public Law 77 of the Ninetieth Congress, 38 U.S.C. chapter 34, and all amendments thereto, except the State Department of Education shall be the state agency for approving and certifying all educational or training institutions, as defined in Public Law 77 above mentioned, and related training in connection therewith.

**Source:** Laws 1947, c. 306, § 5, p. 930; Laws 1969, c. 754, § 4, p. 2839.

### **80-401.05 Comprehensive Health Insurance Pool; board of directors; Department of Insurance; duties.**

The Board of Directors of the Comprehensive Health Insurance Pool and the Department of Insurance shall work closely with the Department of Veterans' Affairs to ensure the Veterans' Aid Income Fund and various federal benefits are utilized along with the Comprehensive Health Insurance Pool as resources for veterans and their families.

**Source:** Laws 1992, LB 835, § 3.

#### Cross References

**Comprehensive Health Insurance Pool Act**, see section 44-4201.

### **80-401.06 Veterans' Advisory Commission; members; appointment; qualifications.**

There is hereby created the Veterans' Advisory Commission, which shall consist of five members who shall be appointed by the Governor. No person shall be eligible to receive appointment as a member unless he or she (1) has been a resident of the State of Nebraska for at least five years immediately prior to his or her appointment, (2) has served in the armed forces of the United States during the dates set forth in section 80-401.01 and was discharged or otherwise separated with a characterization of honorable from such service, and (3) is a member of a recognized veterans organization. Such membership shall be certified to the Governor annually by the department adjutant of the recognized veterans organization. The Governor shall appoint one member of the Veterans' Advisory Commission from each of the three congressional districts in the state as the districts were constituted on January 1, 1962, and the fourth and fifth members shall be selected at large.

**Source:** Laws 1947, c. 306, § 7, p. 930; Laws 1953, c. 326, § 2, p. 1079; Laws 1961, c. 282, § 6, p. 827; Laws 1967, c. 563, § 2, p. 1857; Laws 1969, c. 754, § 5, p. 2839; Laws 2005, LB 54, § 32.

**Cross References**

For qualification of members, see section 80-410.

**80-401.07 Veterans' Advisory Commission; members; tenure of office.**

The terms of office of the members of the Veterans' Advisory Commission initially appointed shall expire on March 1 of the years 1948, 1949, 1950, 1951 and 1952, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint or reappoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his 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.

**Source:** Laws 1947, c. 306, § 8, p. 931.

**80-401.08 Veterans' Advisory Commission; members; chairperson; expenses.**

The members of the Veterans' Advisory Commission shall annually appoint one of its members as chairperson and one as secretary. The members of the commission shall each qualify by taking and subscribing an oath of office. No member shall receive any salary for his or her services, but each shall be reimbursed for his or her actual and necessary expenses incurred by him or her in performing his or her duties as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1947, c. 306, § 9, p. 931; Laws 1981, LB 204, § 167; Laws 1983, LB 369, § 4.

**80-401.09 Veterans' Advisory Commission; duties; meetings.**

The Veterans' Advisory Commission shall be empowered to investigate the handling of veterans affairs under the jurisdiction of the Director of Veterans' Affairs, and to make recommendations and report to the Governor or the director on such matters. The commission shall also act as an appeal board, to whom recourse can be had by any individual or post of a recognized veterans organization from any decision made by the Director of Veterans' Affairs or any

of his agents or deputies, on a claim for aid from the Nebraska Veterans' Aid Fund. The majority decision of the appeal board shall be final and shall govern in all matters presented to it upon which a hearing is had. The Veterans' Advisory Commission shall meet at least twice each year, or on call of the chairman or three members of the commission.

**Source:** Laws 1947, c. 306, § 10, p. 931; Laws 1969, c. 754, § 6, p. 2840.

#### **80-401.10 Director; seal; adopt; rules and regulations; fiscal year.**

The director shall, within thirty days after the creation of the Department of Veterans' Affairs, adopt a seal and make such rules and regulations for its administration, not inconsistent herewith, as he or she may deem expedient. He or she may, from time to time, amend such rules and regulations. The fiscal year of the department shall conform to the fiscal year of the state.

**Source:** Laws 1947, c. 306, § 11, p. 932; Laws 1981, LB 545, § 28.

#### **80-401.11 Department of Veterans' Affairs; offices; employees.**

Suitable offices shall be provided for the Department of Veterans' Affairs in the State Capitol. It may maintain necessary offices at such other places in the state as it may designate and may incur the necessary expense for office furniture, stationery, printing and other incidental or necessary expenses. It may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business.

**Source:** Laws 1947, c. 306, § 12, p. 932.

#### **Cross References**

**Annual property inventory, requirement,** see section 81-1118.02.

**Basic workweek,** see sections 84-1001 to 84-1005.

**Qualifications of personnel,** see section 80-410.

#### **80-401.12 Repealed. Laws 1967, c. 402, § 1.**

#### **80-402 Veterans aid; conscientious objectors denied relief.**

No benefit shall accrue to, and none of the provisions of sections 80-401 to 80-405 shall apply to conscientious objectors who availed themselves of the privilege of any exemption from military duty.

**Source:** Laws 1921, c. 40, § 1, p. 181; C.S.1922, § 6206; Laws 1923, c. 126, § 1, p. 311; Laws 1927, c. 194, § 1, p. 552; C.S.1929, § 80-401; R.S.1943, § 80-402.

#### **80-403 Veterans relief; persons eligible; disbursements.**

(1) All money disbursed through the Director of Veterans' Affairs shall be expended by him or her in furnishing food, shelter, fuel, wearing apparel, or medical or surgical aid or in assisting with the funeral expenses of discharged veterans who come within one of the classes described in subsection (2) or (3) of this section.

(2) Such aid shall be provided upon application to veterans as defined in section 80-401.03, their widows, widowers, spouses, and their children age eighteen or younger or until age twenty-three if attending school full time, and at any age if the child was permanently incapable of self-support at age eighteen (a) who are legal residents of this state on the date of such application and (b) who may be in need of such aid.

(3) In cases in which an eligible veteran or widow or widower dies leaving no next of kin to apply for payment of expenses of last illness and burial, a recognized veterans organization or a county veterans service officer may apply, on behalf of the deceased, for assistance in paying such expenses. All such payments shall be made by the director. There may be expended, for purposes other than those set forth in this section, such sum or sums as may be specifically appropriated by the Legislature for such purposes.

**Source:** Laws 1921, c. 40, § 2, p. 182; C.S.1922, § 6207; Laws 1923, c. 126, § 2, p. 312; Laws 1927, c. 194, § 2, p. 554; C.S.1929, § 80-402; R.S.1943, § 80-402; Laws 1945, c. 221, § 2, p. 660; Laws 1947, c. 306, § 13, p. 932; Laws 1951, c. 305, § 1, p. 999; Laws 1963, c. 498, § 1, p. 1589; Laws 1967, c. 562, § 2, p. 1854; Laws 1967, c. 561, § 3, p. 1851; Laws 1969, c. 754, § 7, p. 2840; Laws 1971, LB 336, § 1; Laws 1979, LB 80, § 113; Laws 1997, LB 441, § 2; Laws 1999, LB 227, § 1; Laws 2008, LB904, § 1.

**80-404 Gifts, power to accept; property, exemption from tax.**

The Department of Veterans' Affairs may receive or hold in trust testamentary or other gifts, and may purchase or receive gifts of such real estate as may be necessary or advantageous for the carrying out of the provisions of sections 80-401 to 80-405. All property so held or owned by it shall be free from taxation during the period of time it shall be held or used by it for the purpose of furnishing aid to such veterans and their dependents authorized by the provisions of section 80-403.

**Source:** Laws 1921, c. 40, § 3, p. 183; C.S.1922, § 6208; C.S.1929, § 80-403; R.S.1943, § 80-404; Laws 1945, c. 221, § 3, p. 662; Laws 1947, c. 306, § 19, p. 933.

**80-404.01 Repealed. Laws 1953, c. 326, § 5.**

**80-404.02 Repealed. Laws 1953, c. 326, § 5.**

**80-404.03 Repealed. Laws 1953, c. 326, § 5.**

**80-404.04 Commissioner of Education; federal funds; disbursement.**

The Commissioner of Education shall be entitled to receive any funds made available by the United States Government for the purpose of carrying out the program of approving and certifying educational and training institutions, and related training in connection therewith. Such funds shall be turned over to the State Treasurer, and disbursed upon vouchers approved by the commissioner, and warrants issued as provided by law.

**Source:** Laws 1947, c. 306, § 21, p. 935.

**80-405 Veterans relief; obtaining by fraud; penalty.**

Any person who shall knowingly, by fraudulent representations, obtain or attempt to obtain any payment or aid herein provided for shall be guilty of a Class II misdemeanor.

**Source:** Laws 1921, c. 40, § 5, p. 183; C.S.1922, § 6210; C.S.1929, § 80-405; R.S.1943, § 80-405; Laws 1953, c. 326, § 3, p. 1080; Laws 1977, LB 39, § 264.

**80-406 County service committee; members; appointment.**

To assist the Department of Veterans' Affairs in the performance of its duties, each county board shall appoint, in each county of the state, a county service committee as provided in section 80-101.

**Source:** Laws 1947, c. 306, § 14, p. 933.

**80-407 County veterans service committee; duties; appointment of county veterans service officer; member of committee ineligible.**

Each county veterans service committee shall cooperate with and assist the Department of Veterans' Affairs in the performance and discharge of its duties and functions. Each such county veterans service committee shall appoint, subject to confirmation by the county board, a county veterans service officer for its county after the applicant has been certified as eligible according to section 80-410 by the Director of Veterans' Affairs. Service officers appointed prior to March 27, 1969, shall also be certified as eligible. The county veterans service committee, in cooperation with the Department of Veterans' Affairs, shall issue a certificate of appointment, and establish a service center for the assistance of veterans, and is authorized to accept, for the purpose of carrying out its program of assistance to veterans, grants of funds from the county, municipalities, veterans, civic, religious, and fraternal organizations and groups, and private citizens. The county boards of the counties involved, after meeting with the affected veterans service committees, are authorized to join two or more counties in the appointment of a county veterans service officer for a given area with the expenses to be shared by the counties involved. The county board and the county veterans service committee shall be authorized to appoint or place any veterans service officer on a part-time basis if such officer's service shall not require forty hours per week. Members of the county veterans service committee shall be ineligible to serve as county veterans service officers or assistant county veterans service officers.

**Source:** Laws 1947, c. 306, § 15, p. 933; Laws 1961, c. 414, § 1, p. 1242; Laws 1969, c. 754, § 8, p. 2841; Laws 1973, LB 220, § 8; Laws 1997, LB 269, § 64; Laws 2003, LB 83, § 1.

**80-408 County veterans service officer; officers and employees; oath; bond.**

Each county veterans service officer appointed under the provisions of section 80-407 and every other person entrusted with the funds of a county service committee shall qualify by taking the usual oath of office and shall each give bond in the sum of one thousand dollars, with corporate surety, conditioned for the faithful performance of his duty. The premiums for such bonds shall be paid by the county.

**Source:** Laws 1947, c. 306, § 16, p. 934.

**80-409 County service committee; offices; tax; levy.**

The county board of each county in this state shall provide, by special levy or out of the general fund of the county, such amount as is necessary for the use of the county service committee to aid and enable such county service committee to carry out and execute its functions, powers, and duties as defined in sections 80-401 to 80-401.11, 80-403, 80-404, 80-404.04, and 80-406 to 80-410 and to

pay its expenses. The county board shall provide offices for the county veterans service officer in a location determined by the board.

**Source:** Laws 1947, c. 306, § 17, p. 934; Laws 2001, LB 10, § 2.

**80-410 Director; Veterans' Advisory Commission; state and county veterans service officers; employees; qualifications.**

(1) The Director of Veterans' Affairs, all members of the Veterans' Advisory Commission, all state service officers, all assistant state service officers, and all personnel, except certain special and clerical help, of the state veterans service offices shall have served in the armed forces of the United States during the dates set forth in section 80-401.01, shall have been discharged or otherwise separated with a characterization of honorable from such service, and shall have been bona fide residents of the State of Nebraska continuously for at least five years immediately prior to their assuming a position in any of the offices mentioned.

(2) All county veterans service officers shall have served on active duty in the armed forces of the United States, other than active duty for training, shall have been discharged or otherwise separated with a characterization of honorable from the service, and shall have been bona fide residents of the State of Nebraska continuously for at least one year immediately prior to assuming any such position, except that if there is no applicant for county veterans service officer in a county who will have been a bona fide resident of the State of Nebraska continuously for at least one year prior to assuming such position, the one-year residency requirement may be waived.

(3) All members of the county veterans service committees and all personnel, except certain special and clerical help, of the county veterans service offices shall have all of the qualifications described in subsection (2) of this section, except that such persons may have been discharged or otherwise separated with a characterization of general (under honorable conditions).

**Source:** Laws 1947, c. 306, § 18, p. 934; Laws 1953, c. 326, § 4, p. 1080; Laws 1967, c. 563, § 3, p. 1857; Laws 1969, c. 754, § 9, p. 2842; Laws 2005, LB 54, § 33; Laws 2009, LB52, § 1; Laws 2014, LB737, § 1.

Effective date July 18, 2014.

**Cross References**

**Director**, qualifications of, see section 80-401.02.

**Veterans' Advisory Commission**, qualifications of members, see section 80-401.06.

**80-411 Waiver of tuition and fees at institutions of higher education; qualifications; application; Director of Veterans' Affairs; approval; effect.**

(1) If the requirements of subsection (2) of this section are met, the University of Nebraska, the state colleges, and the community colleges shall waive the following for a dependent of a veteran:

(a) All tuition; and

(b) All fees remaining due after subtracting awarded federal financial aid grants and state scholarships and grants.

(2) A person shall be eligible for the waiver of tuition and such fees if he or she meets the following requirements:

(a) He or she is a resident of this state and meets the appropriate institution's requirements for establishing residency for the purpose of paying instate tuition;

(b) He or she has a parent, stepparent, or spouse who was a member of the armed forces of the United States and who:

(i) Died of a service-connected disability;

(ii) Died subsequent to discharge as a result of injury or illness sustained while a member of the armed forces which may or may not have resulted in total disability;

(iii) Is permanently and totally disabled as a result of military service. Permanent and total disability does not include total ratings or other temporary ratings except total ratings based on individual unemployability if permanent; or

(iv) While a member of the armed forces of the United States, is classified as missing in action or as a prisoner of war during armed hostilities; and

(c) If he or she is a child or stepchild of a person described in subdivision (2)(b) of this section, he or she is under the age of twenty-six years unless he or she serves on active duty with the armed forces after his or her eighteenth birthday but before his or her twenty-sixth birthday, in which case such period shall end five years after his or her first discharge or release from such duty with the armed forces, but in no event shall such period be extended beyond the thirty-first birthday.

(3) An application for a waiver shall be submitted through one of the recognized veterans organizations or any county service officer on a form to be prescribed by the Director of Veterans' Affairs. The organization or county service officer shall thoroughly investigate to determine if the applicant is eligible for the waiver and transmit a recommendation for action on the application to the director.

(4) If the director determines that the applicant is eligible for the waiver, the director shall so certify to the institution in which the applicant desires to enroll. The decision of the director shall, in the absence of fraud or misrepresentation on the part of the applicant, be final and shall be binding upon the applicant and upon the institutions specified in this section. The director shall adopt and promulgate reasonable rules and regulations for the administration of this section.

(5) The waiver shall be valid for one degree, diploma, or certificate from a community college and one baccalaureate degree. Receipt of such degree, diploma, or certificate from a community college shall precede receipt of such baccalaureate degree.

**Source:** Laws 1965, c. 576, § 1, p. 1867; Laws 1967, c. 564, § 1, p. 1858; Laws 1973, LB 307, § 1; Laws 1975, LB 90, § 4; Laws 1979, LB 80, § 114; Laws 1993, LB 74, § 1; Laws 1999, LB 227, § 2; Laws 2001, LB 368, § 3; Laws 2013, LB180, § 1.

#### Cross References

Educational assistance for military personnel, see Chapter 80, article 9, and sections 85-505 to 85-508.

**80-412 Graves; Director of Veterans' Affairs; permanent registry.**

The Director of Veterans' Affairs shall make and preserve by counties a permanent registry of the graves of all persons who shall have served in the armed forces of the United States and whose mortal remains rest in Nebraska. The county veterans service officer of each county shall be charged with securing the information requested by the Director of Veterans' Affairs of every person having a service record buried in that county and immediately forwarding such information to the office of the director. Such information shall be secured from the undertaker in charge of the burial and shall be transmitted by him or her to the county veterans service officer of the county where burial is made and shall be recorded alphabetically and by description of location in the cemetery where buried, in a book as prescribed by the director and kept for that purpose in the office of the county veterans service officer.

**Source:** Laws 1971, LB 338, § 1; Laws 2005, LB 54, § 34.

**Cross References**

**Veterans cemetery system**, authorized, see section 12-1301.

**Wyuka Cemetery**, soldiers' burial ground, see sections 12-104 and 12-105.

**80-413 Land used for veterans services; retrocession of jurisdiction.**

(1) The consent of the State of Nebraska is hereby given to the retrocession of jurisdiction, either partially or wholly, by the Veterans' Administration, an agency of the United States Government, over land owned by the United States within the boundaries of Nebraska, and the Governor of the state is hereby authorized to accept for the state such retrocession of jurisdiction.

(2) Retrocession of jurisdiction shall be effected upon written notice to the Governor by the principal officer of the Veterans' Administration having supervision and control over the land.

(3) This section shall apply only to the following lands:

(a) Land on which is located the Veterans' Administration Hospital, Omaha, Nebraska;

(b) Land on which is located the Veterans' Administration Hospital, Lincoln, Nebraska;

(c) Land on which is located the Veterans' Administration Hospital, Grand Island, Nebraska; and

(d) Land on which is located the Fort McPherson National Cemetery, Maxwell, Nebraska.

**Source:** Laws 1975, LB 391, § 1.

**80-414 Department of Veterans' Affairs; create and maintain registry; contents; notation of "veteran" on operator's license or state identification card; eligibility.**

(1) The Department of Veterans' Affairs shall create and maintain a registry of residents of Nebraska who meet the requirements of subdivision (1)(a) or (b) of section 60-3,122.04 or subsection (1) of section 60-4,189. The Department of Veterans' Affairs may adopt and promulgate rules and regulations governing the establishment and maintenance of the registry. The registry may be used to assist the department in carrying out the duties of the department and shall provide for the collection of sufficient information to identify an individual who qualifies for Military Honor Plates or a notation of "veteran" on his or her operator's license or state identification card issued by the Department of

Motor Vehicles. The registry may include information such as identifying information on an individual, an individual's records on active duty in the armed forces of the United States, or an individual's status of active duty, retired, discharged, or other.

(2) Any resident of Nebraska who meets the requirements of subdivision (1)(a) or (b) of section 60-3,122.04 or subsection (1) of section 60-4,189 shall register with the Department of Veterans' Affairs using the registry created by this section before being eligible for Military Honor Plates or a notation of "veteran" on his or her operator's license or state identification card issued by the Department of Motor Vehicles. No person shall be deemed eligible until his or her status has been verified on the registry.

(3) The Department of Motor Vehicles may adopt and promulgate rules and regulations governing use of the registry of the Department of Veterans' Affairs for determination of eligibility for the issuance of Military Honor Plates or the notation of "veteran" on operators' licenses and state identification cards.

**Source:** Laws 2013, LB93, § 6; Laws 2014, LB383, § 11.  
Effective date July 18, 2014.

**ARTICLE 5**

**VETERANS SERVICE COORDINATING COMMITTEE**

**Note:** According to the provisions of section 80-507, the act comprising this article expired by its own limitation on June 30, 1947. The entire article has therefor been omitted.

**ARTICLE 6**

**MENTALLY ILL VETERANS**

Section

- 80-601. Veterans; mentally ill or dangerous sex offender; care or treatment by United States Department of Veterans Affairs; commitment; powers.
- 80-602. Veterans; mentally ill; hospital or facility operated by United States Department of Veterans Affairs; release.
- 80-603. Veterans; mentally ill; jurisdiction of courts.
- 80-604. Veterans; mentally ill; order of commitment by court of another state; effect.
- 80-605. Veterans; mentally ill; commitment; transfer; procedure.
- 80-606. Department of Health and Human Services; hospitals of federal government; lack of control.

**80-601 Veterans; mentally ill or dangerous sex offender; care or treatment by United States Department of Veterans Affairs; commitment; powers.**

Whenever in any proceeding under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act it is determined that a person is mentally ill and dangerous or a dangerous sex offender as defined in section 83-174.01 and it appears that such person is eligible for care or treatment by the United States Department of Veterans Affairs or another agency of the United States Government, the mental health board, upon determination by the department or such other agency that facilities are available and that such person is eligible for care or treatment therein, may commit such person to the department or other agency. Upon commitment, such person shall be subject to the applicable rules and regulations of the department or other agency of the United States operating the institution in which such care or treatment is provided. The chief officer of any facility of the department or institution operated by any other agency of the United States to which a mentally ill and

dangerous person or a dangerous sex offender is committed by a proper agency in this state shall have the same powers as chief executive officers of state hospitals for the care of the mentally ill in this state with respect to the custody, transfer, conditional discharge, or discharge of such person.

**Source:** Laws 1947, c. 307, § 1, p. 936; Laws 1976, LB 806, § 88; Laws 1991, LB 2, § 25; Laws 2004, LB 1083, § 126; Laws 2006, LB 1199, § 84.

#### Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

Sex Offender Commitment Act, see section 71-1201.

### **80-602 Veterans; mentally ill; hospital or facility operated by United States Department of Veterans Affairs; release.**

If, in the judgment of the chief officer of a hospital or facility operated or utilized within this state by the United States Department of Veterans Affairs, the release therefrom of a department patient would endanger his or her life or property or the lives or property of others, such chief officer is authorized, pending the initiation of commitment proceedings, to retain custody of such patient for a reasonable time, not to exceed ten days, after receiving written demand for the patient's release unless otherwise ordered by a court of competent jurisdiction notwithstanding that the patient shall have been admitted as a voluntary patient and without compliance with the admission procedures prescribed by law.

**Source:** Laws 1947, c. 307, § 2, p. 937; Laws 1991, LB 2, § 26.

### **80-603 Veterans; mentally ill; jurisdiction of courts.**

Jurisdiction is retained in the appropriate courts of this state to determine at any time the necessity for continuance of restraint as provided by law.

**Source:** Laws 1947, c. 307, § 3, p. 937.

### **80-604 Veterans; mentally ill; order of commitment by court of another state; effect.**

The judgment or order of commitment by a court or board of competent jurisdiction of another state or of the District of Columbia committing a person to the United States Department of Veterans Affairs or other agency of the United States Government for care or treatment shall have the same force and effect, as to the committed person while in this state, as in the jurisdiction in which is situated the court or board entering the judgment or making the order. The courts or boards of the committing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person and determining the necessity for continuance of restraint. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any hospital or facility of the department or of any institution operated in this state by any other agency of the United States to retain custody of, transfer, parole, or discharge the committed person.

**Source:** Laws 1947, c. 307, § 4, p. 937; Laws 1991, LB 2, § 27.

### **80-605 Veterans; mentally ill; commitment; transfer; procedure.**

The appropriate official of the United States Department of Veterans Affairs or other agency of the United States shall have authority to transfer any person committed to the United States Department of Veterans Affairs or other appropriate agency of the United States or to a hospital maintained by either to any other hospital operated by the United States Department of Veterans Affairs or any other agency of the United States, to any licensed private institution, or, subject to the prior approval of the Department of Health and Human Services, to any Nebraska state hospital for the mentally ill. The Department of Health and Human Services, upon written consent of the legal guardian of the patient or the written approval of the county board of mental health which committed such patient if no such guardian has been appointed, shall have the authority, subject to eligibility and the prior approval of the appropriate official of the United States Department of Veterans Affairs or other appropriate agency of the United States Government, to transfer for care or treatment any patient committed to a Nebraska state hospital for the care of the mentally ill to the United States Department of Veterans Affairs or other appropriate agency of the United States Government. Upon any such transfer and notice thereof by mail to the committing court or the judge thereof or the committing board, the original commitment of such person shall be deemed to constitute commitment to the United States Department of Veterans Affairs or other agency of the United States or to the state hospital or licensed institution to which such person may, from time to time, be so transferred.

**Source:** Laws 1947, c. 307, § 5, p. 938; Laws 1947, c. 308, § 1, p. 939; Laws 1991, LB 2, § 28; Laws 1997, LB 307, § 214.

#### Cross References

Department of Health and Human Services, institutions controlled by, see section 83-108.

### **80-606 Department of Health and Human Services; hospitals of federal government; lack of control.**

Nothing in sections 80-601 to 80-606 shall be construed as conferring upon the Department of Health and Human Services or other agency or officer of this state any power of licensing, supervision, inspection, or control over hospitals or other institutions operated by the United States Government or over the officers or employees therein.

**Source:** Laws 1947, c. 307, § 6, p. 939; Laws 1996, LB 1044, § 834.

## **ARTICLE 7 MINOR VETERANS**

### Section

80-701. Minority; effect.

### **80-701 Minority; effect.**

The disability of minority of any person otherwise eligible for a loan or for guaranty or insurance of a loan pursuant to the Act of the Congress of the United States entitled the Servicemen's Readjustment Act of 1944, as heretofore or hereafter amended, and of the minor spouse of any eligible veteran in connection with any transaction entered into pursuant to such Act of the Congress of the United States, as heretofore or hereafter amended, shall not affect the binding effect of any obligation incurred by such eligible person or

spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing, or conveying property or any interest therein, if all or part of any such obligation is guaranteed or insured by the federal government or the Secretary of Veterans Affairs pursuant to the act and amendments thereto or, if the secretary is the creditor, by reason of a loan or a sale pursuant to such act and amendments thereto. This section shall not create or render enforceable any other or greater rights or liabilities than would exist if neither such person nor such spouse were a minor.

**Source:** Laws 1953, c. 327, § 1, p. 1081; Laws 1991, LB 2, § 29.

## ARTICLE 8

### VIETNAM VETERANS EDUCATION LOANS

#### Section

- 80-801. Repealed. Laws 2001, LB 5, § 1.
- 80-802. Repealed. Laws 2001, LB 5, § 1.
- 80-803. Repealed. Laws 2001, LB 5, § 1.
- 80-804. Repealed. Laws 2001, LB 5, § 1.
- 80-805. Repealed. Laws 2001, LB 5, § 1.
- 80-806. Repealed. Laws 2001, LB 5, § 1.

**80-801 Repealed. Laws 2001, LB 5, § 1.**

**80-802 Repealed. Laws 2001, LB 5, § 1.**

**80-803 Repealed. Laws 2001, LB 5, § 1.**

**80-804 Repealed. Laws 2001, LB 5, § 1.**

**80-805 Repealed. Laws 2001, LB 5, § 1.**

**80-806 Repealed. Laws 2001, LB 5, § 1.**

## ARTICLE 9

### EDUCATION ASSISTANCE FOR MILITARY PERSONNEL

#### Cross References

National Guard, Nebraska, tuition assistance, see sections 85-505 to 85-508.

Tuition waiver for dependent of veteran, see section 80-411.

#### Section

- 80-901. Member of Active Selected Reserve; tuition credit; amount; duration.
- 80-902. Tuition credit; conditions.
- 80-903. Member of Active Selected Reserve; responsibility to obtain certificate of performance; prerequisite to tuition credit.

**80-901 Member of Active Selected Reserve; tuition credit; amount; duration.**

Any Nebraska resident who is an enlisted member of a Nebraska-based unit of the Active Selected Reserve of the armed forces of the United States who meets the requirements set forth in section 80-902 and complies with section 80-903, and who enrolls, on or after July 10, 1976, in any state-supported university or college, including any community college, shall be entitled to a credit of fifty percent of the tuition charges of such university or college. Such entitlement shall be continuous so long as the member maintains satisfactory service in the Active Selected Reserve and pursues his course of study in a manner which satisfies the normal requirements of the university or college.

**Source:** Laws 1976, LB 266, § 1.

**80-902 Tuition credit; conditions.**

In order to qualify for the tuition credit provided for in section 80-901, a member of the Active Selected Reserve shall (1) be classified as enlisted personnel who have a minimum of two years remaining on their enlistment at the commencement of each term in their respective courses of study, (2) have agreed to serve a minimum of three years in the reserve, (3) not have completed his tenth year of total service in the armed forces of the United States, and (4) pursue a course of study leading to a degree or the equivalent level of study in a community college, and his entitlement to such credit shall cease upon the attainment of such degree or completion of such course of study. Such entitlement shall not be granted to more than two hundred individuals in any calendar year.

**Source:** Laws 1976, LB 266, § 2.

**80-903 Member of Active Selected Reserve; responsibility to obtain certificate of performance; prerequisite to tuition credit.**

It shall be the responsibility of the individual member of the Active Selected Reserve to obtain a certificate from his commanding officer attesting to his satisfactory performance and to submit it to the Director of Veterans' Affairs who, if he finds that granting the entitlement will not exceed the limitation of new entitlements provided in section 80-902, shall endorse the certificate of performance as approved and return it to the member for presentation to the college or university in order to obtain tuition credit upon initial enrollment. Such certification, without the necessity of endorsement by the Director of Veterans' Affairs, shall be accomplished and presented at the time of enrollment for each subsequent term for which tuition credit is requested.

**Source:** Laws 1976, LB 266, § 3.



## CHAPTER 81

### STATE ADMINISTRATIVE DEPARTMENTS

Article.

1. The Governor and Administrative Departments.
  - (a) General Provisions. 81-101 to 81-124.
  - (b) State Budget. 81-125 to 81-138.04.
  - (c) Printing and Office Supplies. 81-139 to 81-144. Repealed.
  - (d) Materiel Division of Administrative Services. 81-145 to 81-163.01.
  - (e) Central Mailing Room. 81-164 to 81-172.
  - (f) Deferred Building Renewal and Maintenance. 81-173 to 81-191.01.
  - (g) Termination of Agencies, Boards, and Commissions. 81-192 to 81-1,108. Repealed.
2. Department of Agriculture.
  - (a) General Powers. 81-201 to 81-202.02.
  - (b) Food Codes. 81-203 to 81-217.32. Transferred or Repealed.
  - (c) Frozen Desserts. 81-218 to 81-228. Repealed.
  - (d) Control of Dairy Industry. 81-229 to 81-263.123. Transferred or Repealed.
  - (e) Condensed Milk. 81-264 to 81-267. Repealed.
  - (f) Eggs. 81-268 to 81-275.35. Repealed.
  - (g) Produce Commission Merchants. 81-276 to 81-280. Repealed.
  - (h) Cider and Vinegar. 81-281 to 81-286. Repealed.
  - (i) Oleomargarine and Butterine. 81-287 to 81-2,110. Repealed.
  - (j) Food; Premises Used for Manufacture or Preparation; Sanitation. 81-2,111 to 81-2,121. Repealed.
  - (k) Cold Storage Warehouses. 81-2,122 to 81-2,134. Repealed.
  - (l) Frozen Food Locker Plants. 81-2,134.01 to 81-2,134.11. Repealed.
  - (m) Seeds. 81-2,135 to 81-2,157.
  - (n) Commercial Fertilizer and Soil Conditioner. 81-2,158 to 81-2,162.28.
  - (o) Publicity. 81-2,163 to 81-2,164.03.
  - (p) Beekeeping. 81-2,165 to 81-2,181.
  - (q) Soft Drinks. 81-2,182 to 81-2,185. Repealed.
  - (r) Antifreeze. 81-2,186 to 81-2,197. Repealed.
  - (s) Mobile Home Courts. 81-2,198 to 81-2,210. Repealed.
  - (t) Meats. 81-2,211 to 81-2,216. Repealed.
  - (u) Grade A Milk. 81-2,217 to 81-2,232. Repealed.
  - (v) Organic Food. 81-2,233 to 81-2,235.
  - (w) Animal Damage Control. 81-2,236 to 81-2,238.
  - (x) Nebraska Pure Food Act. 81-2,239 to 81-2,292.
  - (y) Laboratory Testing Services. 81-2,293.
3. Department of Banking and Finance.
  - (a) General Powers. 81-301.
  - (b) Department of Banking and Finance Settlement Cash Fund. 81-302.
4. Department of Labor. 81-401 to 81-405.
5. State Fire Marshal.
  - (a) Department of Insurance; General Powers. 81-501. Transferred.
  - (b) General Provisions. 81-501.01 to 81-541.01.
  - (c) Natural Gas Pipeline Safety. 81-542 to 81-552.
  - (d) State Electrical Division. 81-553 to 81-570. Repealed.
  - (e) State Electrical Act. 81-571 to 81-5,114. Transferred.
  - (f) Arson Reporting Immunity Act. 81-5,115 to 81-5,131.
  - (g) Smoke Detectors. 81-5,132 to 81-5,146.
  - (h) Accessibility Standards. 81-5,147 to 81-5,150.
  - (i) Training Division. 81-5,151 to 81-5,157.
  - (j) Fire Protection Systems. 81-5,158 to 81-5,164.
6. Health and Human Services.

## STATE ADMINISTRATIVE DEPARTMENTS

### Article.

- (a) Powers and Duties. 81-601 to 81-604.03.
  - (b) Maternity and Infancy. 81-605 to 81-608. Transferred.
  - (c) Maternal and Child Health. 81-609 to 81-616. Transferred.
  - (d) Dependent and Delinquent Children. 81-617, 81-618. Transferred.
  - (e) Branch Laboratory at Scottsbluff. 81-619. Transferred.
  - (f) Drugs. 81-620 to 81-624. Transferred.
  - (g) Poisons. 81-625 to 81-636. Transferred.
  - (h) Research Grants. 81-637 to 81-640.01.
  - (i) Cancer Registry. 81-641 to 81-650.
  - (j) Community and Home Health Services. 81-651, 81-652.
  - (k) Brain Injury Registry. 81-653 to 81-662.
  - (l) Medical Records and Health Information. 81-663 to 81-675.
  - (m) Health Care Data Analysis. 81-676 to 81-680.
  - (n) Parkinson's Disease Registry Act. 81-681 to 81-6,110.
  - (o) Outpatient Surgical Procedures Data Act. 81-6,111 to 81-6,119.
  - (p) Transportation Services. 81-6,120.
7. Department of Roads.
- (a) General Powers. 81-701 to 81-701.06.
  - (b) Natural Lakes. 81-702 to 81-708. Transferred.
  - (c) Highways; Salvaged Material. 81-709. Repealed.
  - (d) State Wayside Areas. 81-710, 81-711.
8. Independent Boards and Commissions.
- (a) Game and Parks Commission. 81-801 to 81-815.65. Transferred or Repealed.
  - (b) Council of State Governments. 81-816 to 81-824.
  - (c) Emergency Management. 81-825 to 81-829.75.
  - (d) Office of Homeland Security. 81-830 to 81-838.
  - (e) Board of Examiners for Professional Engineers and Architects. 81-839 to 81-856. Repealed.
  - (f) Sundry Claims Board. 81-857 to 81-861. Transferred.
  - (g) Real Estate Commission. 81-862 to 81-887.03.
  - (h) Nebraska Merit System. 81-888 to 81-8,107. Repealed.
  - (i) Land Surveying. 81-8,108 to 81-8,127.
  - (j) State Athletic Commissioner. 81-8,128 to 81-8,142.01.
  - (k) Centennial Commission. 81-8,143 to 81-8,145.03. Repealed.
  - (l) Nebraska Song Committee. 81-8,146 to 81-8,148. Repealed.
  - (m) Nebraska Industrial Research Institute. 81-8,149 to 81-8,157. Repealed.
  - (n) Collection Agency. 81-8,158 to 81-8,183. Transferred or Repealed.
  - (o) Professional Landscape Architects. 81-8,183.01 to 81-8,208.
  - (p) Tort Claims, State Claims Board, and Risk Management Program. 81-8,209 to 81-8,239.11.
  - (q) Public Counsel. 81-8,240 to 81-8,254.
  - (r) Commission on the Status of Women. 81-8,255 to 81-8,261. Repealed.
  - (s) Commission on Latino-Americans. 81-8,262 to 81-8,271.01.
  - (t) Nebraska American Revolution Bicentennial Commission. 81-8,272 to 81-8,275. Repealed.
  - (u) Real Estate Appraisers. 81-8,276 to 81-8,293. Repealed.
  - (v) State Miscellaneous Claims Act. 81-8,294 to 81-8,301.
  - (w) State Contract Claims Act. 81-8,302 to 81-8,306.
  - (x) Nebraska Lewis and Clark Bicentennial Commission. 81-8,307, 81-8,308. Repealed.
  - (y) Nebraska Sesquicentennial Commission. 81-8,309, 81-8,310.
9. State Cooperation with Federal Government. 81-901 to 81-918.
10. State-Owned Motor Vehicles. 81-1001 to 81-1025.
11. Department of Administrative Services.
- (a) General Provisions. 81-1101 to 81-1139.01.
  - (b) State Office Wastepaper Recycling. 81-1140 to 81-1161. Transferred or Repealed.
  - (c) Forms Management Program. 81-1162 to 81-1169. Repealed.
  - (d) Requests for Payments from the State. 81-1170 to 81-1173.
  - (e) Payment of Expenses. 81-1174 to 81-1182.01.
  - (f) State Government Recycling Management Act. 81-1183 to 81-1189.

## STATE ADMINISTRATIVE DEPARTMENTS

### Article.

- (g) Information Technology Infrastructure Act. 81-1190 to 81-11,103. Transferred or Repealed.
- (h) Performance Evaluation for Certain Administrative Heads. 81-11,104.
- (i) Nebraska Public Safety Communication System Revolving Fund. 81-11,105.
- 12. Department of Economic Development.
  - (a) General Provisions. 81-1201 to 81-1213.01.
  - (b) Commission on Indian Affairs. 81-1214 to 81-1219.01. Transferred.
  - (c) Tourist Promotion Stamps. 81-1220, 81-1221. Repealed.
  - (d) Property Controlled by Department. 81-1222 to 81-1225.
  - (e) Department of Economic Development; Functions. 81-1226 to 81-1244. Repealed.
  - (f) Nebraska Visitors Development Act. 81-1245 to 81-1264. Transferred or Repealed.
  - (g) Venture Capital Network Act. 81-1265 to 81-1271. Repealed.
  - (h) Business Development Partnership Act. 81-1272 to 81-1277.
  - (i) Agricultural Products Research. 81-1278 to 81-1280.
  - (j) Housing Affordability Strategy. 81-1281.
  - (k) Rural Development. 81-1282 to 81-1287. Transferred.
  - (l) Partnerships for Economic Development Act. 81-1288 to 81-1294. Repealed.
  - (m) Microenterprise Development Act. 81-1295 to 81-12,105.01. Repealed.
  - (n) Nebraska Venture Capital Forum Act. 81-12,106 to 81-12,116. Repealed.
  - (o) Nebraska Opportunity Zone Act. 81-12,117 to 81-12,124.
  - (p) Building Entrepreneurial Communities Act. 81-12,125 to 81-12,128. Repealed.
  - (q) Nebraska Operational Assistance Act. 81-12,129 to 81-12,135.
  - (r) Small Business Innovation Act. 81-12,136 to 81-12,143.
  - (s) Site and Building Development Act. 81-12,144 to 81-12,151.
  - (t) Business Innovation Act. 81-12,152 to 81-12,167.
- 13. Personnel.
  - (a) State Personnel Service. 81-1301 to 81-1354.05.
  - (b) Affirmative Action Program. 81-1355 to 81-1368.
  - (c) State Employees Collective Bargaining Act. 81-1369 to 81-1390.
  - (d) State Employees. 81-1391 to 81-1394.
- 14. Law Enforcement.
  - (a) Law Enforcement Training. 81-1401 to 81-1414.10.
  - (b) Commission on Law Enforcement and Criminal Justice. 81-1415 to 81-1429.02.
  - (c) Human Trafficking. 81-1430 to 81-1437.
  - (d) Law Enforcement Reserve Forces. 81-1438 to 81-1446.
  - (e) Office of Violence Prevention. 81-1447 to 81-1451.
- 15. Environmental Protection.
  - (a) Environmental Protection Act. 81-1501 to 81-1533.
  - (b) Litter Reduction and Recycling Act. 81-1534 to 81-1566.01.
  - (c) Hazardous Materials. 81-1567 to 81-1570.
  - (d) Landfill and Waste Disposal. 81-1571 to 81-1574. Transferred or Repealed.
  - (e) Storage of Hazardous Substances. 81-1575 to 81-1577.01.
  - (f) Low-Level Radioactive Waste Disposal Act. 81-1578 to 81-15,116.
  - (g) Petroleum Products and Hazardous Substances Storage and Handling. 81-15,117 to 81-15,127.
  - (h) Wastewater Treatment Operator Certification Act. 81-15,128 to 81-15,143.
  - (i) Motor Vehicle Exhaust Emissions. 81-15,144, 81-15,145. Repealed.
  - (j) Solid Waste Disposal Sites. 81-15,146. Repealed.
  - (k) Wastewater Treatment Facilities Construction Assistance Act. 81-15,147 to 81-15,158.
  - (l) Waste Reduction and Recycling. 81-15,158.01 to 81-15,165.
  - (m) Solid Waste Management Plan. 81-15,166.
  - (n) Nebraska Environmental Trust Act. 81-15,167 to 81-15,176.
  - (o) Solid Waste Landfill Closure Assistance Fund. 81-15,177 to 81-15,179.
  - (p) Superfund Cost Share Cash Fund. 81-15,180.
  - (q) Remedial Action Plan Monitoring Act. 81-15,181 to 81-15,188.
  - (r) Technical Advisory Committee. 81-15,189, 81-15,190. Repealed.

## STATE ADMINISTRATIVE DEPARTMENTS

### Article.

- (s) Nebraska Emergency Planning and Community Right to Know Act. 81-15,191 to 81-15,235.
- (t) Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. 81-15,236 to 81-15,253.
- 16. State Energy Office.
  - (a) State Energy Office. 81-1601 to 81-1607.01.
  - (b) Lighting and Thermal Efficiency Standards. 81-1608 to 81-1626.
  - (c) Energy Audits. 81-1627 to 81-1631. Repealed.
  - (d) School District Energy Efficiency Loans and Grants. 81-1632 to 81-1634. Repealed.
  - (e) Petroleum Overcharges. 81-1635 to 81-1641.
  - (f) State Government Recycling Management Act. 81-1642 to 81-1648. Transferred.
- 17. Nebraska Consultants' Competitive Negotiation Act. 81-1701 to 81-1721.
- 18. Crime Victims and Witnesses.
  - (a) Crime Victim's Reparations. 81-1801 to 81-1842.
  - (b) Crime Victims and Witnesses Assistance. 81-1843 to 81-1851.
- 19. Truth and Deception Examiners. 81-1901 to 81-1936.
- 20. Nebraska State Patrol.
  - (a) General Provisions. 81-2001 to 81-2013.04.
  - (b) Retirement System. 81-2014 to 81-2041.
- 21. State Electrical Division. 81-2101 to 81-2145.
- 22. Aging Services.
  - (a) Nebraska Community Aging Services Act. 81-2201 to 81-2228.
  - (b) Care Management Services. 81-2229 to 81-2236.
  - (c) Long-Term Care Ombudsman. 81-2237 to 81-2264.
  - (d) Preadmission Screening. 81-2265 to 81-2271.
  - (e) Department on Aging Cash Fund. 81-2272. Repealed.
  - (f) Nebraska Senior Companion Volunteer Program Act. 81-2273 to 81-2283.
- 23. Intergovernmental Data Communications Act. Transferred.
- 24. Prompt Payment Act. 81-2401 to 81-2408.
- 25. Commission on Indian Affairs. 81-2501 to 81-2516.
- 26. Geographic Information System. Transferred.
- 27. State Government Effectiveness Act. 81-2701 to 81-2711.
- 28. Railroad Right-of-Way. 81-2801.
- 29. State Civil Officers. 81-2901.
- 30. Nebraska Health and Human Services System Act. Repealed.
- 31. Department of Health and Human Services. 81-3101 to 81-3138.
- 32. Department of Health and Human Services Regulation and Licensure. Repealed.
- 33. Department of Health and Human Services Finance and Support. Repealed.
- 34. Engineers and Architects Regulation Act. 81-3401 to 81-3455.
- 35. Geologists Regulation Act. 81-3501 to 81-3541.
- 36. Nebraska Development Network Program. 81-3601 to 81-3609.
- 37. Nebraska Visitors Development Act. 81-3701 to 81-3724.

### Cross References

#### Constitutional provisions:

- Employees, appointment of, see Article IV, section 1, Constitution of Nebraska.
- Expenses, specific appropriation for, see Article III, section 25, Constitution of Nebraska.
- Heads of executive departments:
  - Accounts, keep, see Article IV, section 22, Constitution of Nebraska.
  - Appointment and removal, power of Governor, see Article IV, sections 1, 10, 11, and 12, Constitution of Nebraska.
  - Contracts, conflicts of interest in, see Article III, section 16, Constitution of Nebraska.
  - Defaulter as collector and custodian of public money or property, cannot hold office, see Article XV, section 2, Constitution of Nebraska.
  - Executive officers, who are, see Article IV, section 1, Constitution of Nebraska.
  - Extra compensation, prohibited, see Article III, section 19, Constitution of Nebraska.
  - Fees, costs, and interest, cannot receive for own use, see Article IV, section 25, Constitution of Nebraska.
  - Felon cannot hold office, see Article XV, section 2, Constitution of Nebraska.
  - Impeachment, see Article III, section 17, and Article IV, section 5, Constitution of Nebraska.
  - Ineligible for other state office, see Article IV, section 2, Constitution of Nebraska.
  - Official oath, see Article XV, section 1, Constitution of Nebraska.
  - Residence of, see Article IV, section 1, Constitution of Nebraska.
  - Salary, see Article III, section 19, and Article IV, section 25, Constitution of Nebraska.

## THE GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

Vacancies, filled by Governor, see Article IV, section 12, Constitution of Nebraska.

Impeachment:

Procedure, see Article III, section 17, Constitution of Nebraska.

When, see Article IV, section 5, Constitution of Nebraska.

Powers of government, distribution of, see Article II, section 1, Constitution of Nebraska.

Publications in English language, see Article I, section 27, Constitution of Nebraska.

Records kept at seat of government, see Article IV, section 1, Constitution of Nebraska.

State debts, limitation, see Article XIII, section 1, Constitution of Nebraska.

**Accounts**, audited by Auditor of Public Accounts, see section 84-304.

**Basic workweek**, see section 84-1001 et seq.

**Bonds of employees**, see Chapter 11.

**Felons**:

Disqualified as elector, restoration, when, see sections 29-112 and 29-113.

Disqualified as juror or officeholder, see sections 29-112 and 29-113.

Restoration of civil rights, procedure, see section 29-112.01.

**Impeachment of state officers**, see section 24-101 et seq.

**Oaths of officers and employees**, see sections 11-101 to 11-101.03.

**Property**, Governor is custodian, when, see section 84-101.

**Records Management Act**, see section 84-1220.

**Workers' compensation**, subject to, see section 48-190.

## ARTICLE 1

### THE GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

#### (a) GENERAL PROVISIONS

Section

- 81-101. Executive department; civil administration vested in Governor; departments created.
- 81-101.01. Repealed. Laws 1981, LB 497, § 1.
- 81-102. Department heads; enumeration; appointment and confirmation; removal.
- 81-102.01. Repealed. Laws 1981, LB 497, § 1.
- 81-103. Department heads; salaries; powers of Governor.
- 81-103.01. Repealed. Laws 1957, c. 367, § 11.
- 81-103.02. Repealed. Laws 1959, c. 266, § 1.
- 81-103.03. Repealed. Laws 1971, LB 33, § 1.
- 81-103.04. Repealed. Laws 1961, c. 286, § 1.
- 81-103.05. Repealed. Laws 1967, c. 402, § 1.
- 81-103.06. Repealed. Laws 1967, c. 402, § 1.
- 81-103.07. Repealed. Laws 1967, c. 402, § 1.
- 81-103.08. Repealed. Laws 1967, c. 402, § 1.
- 81-104. Expending agency; special funds; available for expenditure upon approval of estimate of expenses.
- 81-104.01. Agency; petty cash funds; how established; voucher; warrant.
- 81-105. Repealed. Laws 1965, c. 538, § 40.
- 81-106. Tax Commissioner; examination and audit of books of Auditor of Public Accounts; report to Governor and Clerk of the Legislature.
- 81-107. Departments; assistants and employees; appointment; termination; compensation.
- 81-108. Department heads; restrictions on office holding or employment; exceptions.
- 81-109. Department heads; serve without term; exception.
- 81-110. Departments; officers; oath.
- 81-111. Departments; officers; bond or insurance required.
- 81-112. Department heads; rules and regulations; power to make.
- 81-113. Departments; business hours.
- 81-114. Departments; official seal.
- 81-115. Repealed. Laws 1957, c. 398, § 6.
- 81-116. Repealed. Laws 1973, LB 469, § 2.
- 81-117. Department heads; employees; extra services; compensatory time off or payment; employees on hourly basis; guaranteed workweek; work period; how treated.
- 81-117.01. Terms, defined.
- 81-117.02. Compensatory time off or payment; when not applicable.
- 81-118. Departments; receipts; payment to treasury; expenditures; when authorized.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-118.01. Electronic payment; acceptance; conditions.
- 81-118.02. State purchasing card program; created; requirements; State Treasurer and Director of Administrative Services; duties.
- 81-119. Departments; investigations; power to compel testimony and produce documents.
- 81-120. State agency; securities; held for safekeeping; book entry account.
- 81-121. Repealed. Laws 1951, c. 312, § 1.
- 81-122. Repealed. Laws 1951, c. 312, § 1.
- 81-123. Repealed. Laws 1986, LB 741, § 1.
- 81-124. Repealed. Laws 1986, LB 741, § 1.

### (b) STATE BUDGET

- 81-125. State budget; submission to Legislature by Governor; when; contents.
- 81-125.01. State budget; include reserve.
- 81-126. Governor; recommendations as to deficiency funding; bill form.
- 81-127. Repealed. Laws 1967, c. 577, § 2.
- 81-128. Repealed. Laws 1965, c. 538, § 40.
- 81-129. Director of Administrative Services; investigation of all spending agencies; reports.
- 81-130. Repealed. Laws 1965, c. 538, § 40.
- 81-131. Repealed. Laws 1965, c. 538, § 40.
- 81-132. State budget; departmental budget estimates; duty to submit; contents.
- 81-133. State budget; estimates and recommendations; duty of Director of Administrative Services.
- 81-134. State budget; departmental budget estimates; Governor may alter.
- 81-135. State budget; departmental needs; duty to supply information requested by Governor.
- 81-136. State budget; estimates; hearing; when authorized.
- 81-137. State budget; appropriations bill; increase; when authorized.
- 81-138. Appropriations; quarterly estimates required before expending.
- 81-138.01. Valid encumbrance; what constitutes.
- 81-138.02. Contracts; not valid encumbrances; exception.
- 81-138.03. Encumbrance; when paid; lapse.
- 81-138.04. State budget officer; review encumbrances; lapse.

### (c) PRINTING AND OFFICE SUPPLIES

- 81-139. Repealed. Laws 1945, c. 242, § 1.
- 81-140. Repealed. Laws 1951, c. 312, § 1.
- 81-141. Repealed. Laws 1951, c. 312, § 1.
- 81-142. Repealed. Laws 1989, LB 16, § 1.
- 81-143. Repealed. Laws 1951, c. 59, § 1.
- 81-144. Repealed. Laws 1951, c. 59, § 1.

### (d) MATERIEL DIVISION OF ADMINISTRATIVE SERVICES

- 81-145. Materiel division; terms, defined.
- 81-146. Sections; applicability.
- 81-147. Materiel administrator; appointment.
- 81-148. Materiel administrator; salary.
- 81-148.01. Repealed. Laws 1961, c. 286, § 1.
- 81-148.02. Repealed. Laws 1967, c. 402, § 1.
- 81-149. Materiel administrator; qualifications.
- 81-150. Materiel administrator; oath.
- 81-151. Materiel administrator; bond or insurance.
- 81-152. Repealed. Laws 1963, c. 508, § 15.
- 81-153. Materiel division; powers and duties; enumerated.
- 81-153.01. Repealed. Laws 1963, c. 508, § 15.
- 81-154. Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids.
- 81-154.01. Materiel division; University of Nebraska; purchase agreements.
- 81-155. Repealed. Laws 1965, c. 423, § 1.
- 81-156. Laboratory tests; fee.

## THE GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

### Section

- 81-157. Repealed. Laws 1963, c. 508, § 15.
- 81-158. Repealed. Laws 1963, c. 508, § 15.
- 81-159. Requisitions by using agency; procedures used by materiel division.
- 81-160. Repealed. Laws 1963, c. 508, § 15.
- 81-161. Competitive bids; award to lowest responsible bidder; elements considered; energy star certified appliances.
  - 81-161.01. Competitive bids; time requirements; waiver.
  - 81-161.02. Competitive bids; rejection by materiel division; grounds; new bids.
  - 81-161.03. Direct purchases, contracts, or leases; approval required, when; report required; materiel division; duties; Department of Correctional Services; purchases authorized.
  - 81-161.04. Materiel division; surplus property; sale; procedure; proceeds of sale, how credited.
  - 81-161.05. Materiel division or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty.
  - 81-161.06. State Surplus Property Revolving Fund; created; use; investment.
- 81-162. Purchases or leases; form of contract.
- 81-163. Repealed. Laws 1963, c. 508, § 15.
- 81-163.01. Repealed. Laws 2000, LB 654, § 58.

### (e) CENTRAL MAILING ROOM

- 81-164. Central mailing room; equipment required.
- 81-165. Official outgoing mail to be metered; members of Legislature, when exempt.
- 81-166. Postage records; requirements.
- 81-167. Advances for postage; monthly statement by materiel division; remittance by warrant; overdrafts not allowed.
- 81-168. Central mailing room; employees; hours staggered.
- 81-169. Rules and regulations; authority of materiel division.
- 81-170. Repealed. Laws 1963, c. 508, § 15.
- 81-171. Delivery of mail to mailing room for unofficial business; violation; penalty.
- 81-172. Repealed. Laws 1963, c. 508, § 15.

### (f) DEFERRED BUILDING RENEWAL AND MAINTENANCE

- 81-173. Terms, defined.
- 81-174. Task Force for Building Renewal; established; purpose; consultants; appointment; how selected.
- 81-175. Task force; members; compensation.
- 81-176. Task force; review; report.
- 81-177. State agency; inspection of facilities; report; contents; referred to task force.
- 81-178. Report; classification of work items; task force, duties.
- 81-179. Building Renewal Allocation Fund; created; use; investment.
- 81-180. Building renewal funds; expenditures; allocation of funds; procedure.
- 81-181. Agency; proposed building renewal projects report; submitted, when; contents; allocation of funds; conditions.
- 81-182. Governor monitor activities of task force and agencies; authorize issuance of warrants.
- 81-183. Property not eligible for renewal and maintenance funds.
- 81-184. Administration costs.
- 81-185. Committee on Building Maintenance; membership; purpose.
- 81-186. Committee on Building Maintenance; meetings; duties.
- 81-187. Legislative Fiscal Analyst; receive copy of estimates, reports, and allocation requests.
- 81-188. Energy audit report.
  - 81-188.01. State Building Renewal Assessment Fund; created; use; investment.
  - 81-188.02. Repealed. Laws 2011, LB 380, § 6.
  - 81-188.03. University Building Renewal Assessment Fund; created; use; investment.
  - 81-188.04. Repealed. Laws 2011, LB 380, § 6.
  - 81-188.05. State College Building Renewal Assessment Fund; created; use; investment.
  - 81-188.06. Repealed. Laws 2011, LB 380, § 6.
- 81-189. Repealed. Laws 1984, LB 838, § 4.
- 81-190. Act, how cited.

## Section

- 81-191. Repealed. Laws 1984, LB 838, § 4.  
 81-191.01. Repealed. Laws 2011, LB 228, § 5.

## (g) TERMINATION OF AGENCIES, BOARDS, AND COMMISSIONS

- 81-192. Repealed. Laws 1986, LB 745, § 1.  
 81-193. Repealed. Laws 1978, LB 569, § 14.  
 81-194. Repealed. Laws 1980, LB 94, § 19.  
 81-195. Repealed. Laws 1980, LB 939, § 8.  
 81-196. Repealed. Laws 1986, LB 745, § 1.  
 81-197. Repealed. Laws 1984, LB 470, § 7.  
 81-198. Repealed. Laws 1986, LB 745, § 1.  
 81-198.01. Repealed. Laws 1986, LB 745, § 1.  
 81-198.02. Repealed. Laws 1986, LB 745, § 1.  
 81-198.03. Repealed. Laws 1986, LB 745, § 1.  
 81-198.04. Repealed. Laws 1986, LB 745, § 1.  
 81-198.05. Repealed. Laws 1986, LB 745, § 1.  
 81-198.06. Repealed. Laws 1986, LB 745, § 1.  
 81-199. Repealed. Laws 1986, LB 745, § 1.  
 81-1,100. Repealed. Laws 1986, LB 745, § 1.  
 81-1,101. Repealed. Laws 1986, LB 745, § 1.  
 81-1,102. Repealed. Laws 1986, LB 745, § 1.  
 81-1,103. Repealed. Laws 1986, LB 745, § 1.  
 81-1,104. Repealed. Laws 1986, LB 745, § 1.  
 81-1,105. Repealed. Laws 1986, LB 745, § 1.  
 81-1,106. Repealed. Laws 1986, LB 745, § 1.  
 81-1,107. Repealed. Laws 1986, LB 745, § 1.  
 81-1,108. Repealed. Laws 1986, LB 745, § 1.

## (a) GENERAL PROVISIONS

**81-101 Executive department; civil administration vested in Governor; departments created.**

The civil administration of the laws of the state is vested in the Governor. For the purpose of aiding the Governor in the execution and administration of the laws, the executive and administrative work shall be divided into the following agencies: (1) Department of Agriculture; (2) Department of Labor; (3) Department of Roads; (4) Department of Natural Resources; (5) Department of Banking and Finance; (6) Department of Insurance; (7) Department of Motor Vehicles; (8) Department of Administrative Services; (9) Department of Economic Development; (10) Department of Correctional Services; (11) Nebraska State Patrol; and (12) Department of Health and Human Services.

**Source:** Laws 1929, c. 51, § 1, p. 209; C.S.1929, § 81-101; Laws 1933, c. 149, § 1, p. 571; C.S.Supp.,1941, § 81-101; R.S.1943, § 81-101; Laws 1955, c. 329, § 4, p. 1027; Laws 1957, c. 365, § 8, p. 1236; Laws 1957, c. 366, § 51, p. 1282; Laws 1959, c. 424, § 1, p. 1423; Laws 1961, c. 415, § 29, p. 1259; Laws 1961, c. 416, § 9, p. 1267; Laws 1963, c. 504, § 1, p. 1609; Laws 1969, c. 778, § 1, p. 2949; Laws 1973, LB 563, § 16; Laws 1976, LB 561, § 4; Laws 1981, LB 541, § 4; Laws 1991, LB 58, § 2; Laws 1996, LB 1044, § 835; Laws 1999, LB 36, § 35; Laws 2000, LB 900, § 246; Laws 2007, LB296, § 726; Laws 2007, LB334, § 102.

## Cross References

Department of Administrative Services, see section 81-1103.

Department of Aeronautics, see section 3-103.

Department of Correctional Services, see section 83-171.

**Department of Economic Development**, see section 81-1201.02.

**Department of Environmental Quality**, see section 81-1502.

**Department of Health and Human Services**, see section 81-3113.

**Department of Revenue**, see section 77-360.

**Department of Veterans' Affairs**, see section 80-401.02.

**Military Department**, see section 55-120.

**Nebraska State Patrol**, see section 81-2001.

**State Department of Education**, see section 79-301 and Article VII, section 2, Constitution of Nebraska.

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

Matters of fair employment practices and civil rights are matters of statewide and not local concern. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

The terms of this section limit its application to the departments named therein. *State ex rel. Beck v. Obbink*, 172 Neb. 242, 109 N.W.2d 288 (1961).

Department of Water Resources was created by this section. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Reclamation Act was not unconstitutional as conferring judicial powers on an executive or administrative body. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

Language used in the civil administrative code refers to executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Executive department was reorganized in 1933, and, by the terms of the reorganization, heads were established for various departments. *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946).

Department of Banking is an executive and administrative branch of state government with general supervision of banks and banking laws. *State v. Kastle*, 120 Neb. 758, 235 N.W. 458 (1931).

Civil administration of laws is vested in Governor, and to aid Governor, departments of state government were created. *Eidenmiller v. State*, 120 Neb. 430, 233 N.W. 447 (1930).

Department secretary was not authorized to lease building for use of his department, and state was not bound thereby. *State ex rel. Brownell Bldg. Co. v. Cochran*, 113 Neb. 846, 205 N.W. 568 (1925).

### **81-101.01 Repealed. Laws 1981, LB 497, § 1.**

### **81-102 Department heads; enumeration; appointment and confirmation; removal.**

The Governor shall appoint heads for the various agencies listed in section 81-101, subject to confirmation by a majority vote of the members elected to the Legislature. Such appointments shall be submitted to the Legislature within sixty calendar days following the first Thursday after the first Tuesday in each odd-numbered year. The officers shall be designated as follows: (1) The Director of Agriculture for the Department of Agriculture; (2) the Commissioner of Labor for the Department of Labor; (3) the Director-State Engineer for the Department of Roads; (4) the Director of Natural Resources for the Department of Natural Resources; (5) the Director of Banking and Finance for the Department of Banking and Finance; (6) the Director of Insurance for the Department of Insurance; (7) the Director of Motor Vehicles for the Department of Motor Vehicles; (8) the Director of Administrative Services for the Department of Administrative Services; (9) the Director of Correctional Services for the Department of Correctional Services; (10) the Director of Economic Development for the Department of Economic Development; (11) the Superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol; (12) the Property Tax Administrator as the chief administrative officer of the property assessment division of the Department of Revenue; and (13) the chief executive officer for the Department of Health and Human Services. Whoever shall be so nominated by the Governor and shall fail to receive the number of votes requisite for confirmation, shall not be subject to nomination or appointment for this or any other appointive state office requiring confirmation by the Legislature during the period for which his or her appointment was sought. In case of a vacancy in any of such offices during the recess of the Legislature, the Governor shall make a temporary appointment until the next meeting of the Legislature, when he or she shall nominate some person to fill such office. Any person so nominated who is confirmed by the Legislature, shall hold his or her office during the remainder of the term if a specific term has been provided by

law, otherwise during the pleasure of the Governor subject to the provisions of this section; except any such officers may be removed by the Governor pursuant to Article IV of the Constitution of Nebraska.

**Source:** Laws 1929, c. 51, § 2, p. 209; C.S.1929, § 81-102; Laws 1933, c. 149, § 2, p. 571; Laws 1941, c. 177, § 1, p. 695; C.S.Supp.,1941, § 81-102; R.S.1943, § 81-102; Laws 1953, c. 335, § 1, p. 1100; Laws 1957, c. 365, § 9, p. 1237; Laws 1957, c. 366, § 52, p. 1282; Laws 1961, c. 415, § 30, p. 1260; Laws 1961, c. 416, § 10, p. 1268; Laws 1963, c. 504, § 2, p. 1609; Laws 1969, c. 778, § 2, p. 2950; Laws 1969, c. 514, § 4, p. 2105; Laws 1973, LB 563, § 17; Laws 1976, LB 561, § 5; Laws 1981, LB 249, § 4; Laws 1981, LB 541, § 5; Laws 1982, LB 404, § 34; Laws 1996, LB 1044, § 836; Laws 1999, LB 36, § 36; Laws 2000, LB 900, § 247; Laws 2007, LB 296, § 727; Laws 2007, LB334, § 103.

The Director of Water Resources is a state officer and membership on the Natural Resources Commission is an additional duty which could be imposed by the Legislature. *Neeman v. Nebraska Nat. Resources Commission*, 191 Neb. 672, 217 N.W.2d 166 (1974).

Governor appoints heads of executive departments, subject to confirmation by Legislature. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Head of the Department of Agriculture and Inspection is the director, who is appointed by the Governor. *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946).

### **81-102.01 Repealed. Laws 1981, LB 497, § 1.**

### **81-103 Department heads; salaries; powers of Governor.**

The Governor shall have authority to establish the salaries of all persons connected with the various departments including the heads thereof.

**Source:** Laws 1929, c. 51, § 3, p. 210; C.S.1929, § 81-103; Laws 1933, c. 149, § 3, p. 572; Laws 1937, c. 194, § 1, p. 789; Laws 1941, c. 181, § 1, p. 712; C.S.Supp.,1941, § 81-103; Laws 1943, c. 212, § 1, p. 698; R.S.1943, § 81-103; Laws 1945, c. 223, § 1, p. 667; Laws 1947, c. 309, § 1, p. 941; Laws 1951, c. 303, § 3, p. 996; Laws 1953, c. 335, § 2, p. 1100; Laws 1957, c. 365, § 10, p. 1237; Laws 1957, c. 366, § 53, p. 1283; Laws 1957, c. 367, § 8, p. 1292; Laws 1959, c. 425, § 3, p. 1428; Laws 1961, c. 415, § 31, p. 1261; Laws 1961, c. 416, § 11, p. 1269; Laws 1963, c. 507, § 1, p. 1614; Laws 1963, c. 503, § 2, p. 1607; Laws 1963, c. 505, § 1, p. 1612; Laws 1963, c. 504, § 3, p. 1610; Laws 1965, c. 543, § 1, p. 1730.

#### **Cross References**

**Commissioner of Labor**, additional salary, see section 48-605.

Salaries of executive officers were fixed by Legislature and could not be increased during term. *State ex rel. Laughlin v. Johnson*, 156 Neb. 671, 57 N.W.2d 531 (1953).

Authority is vested in Governor to establish salaries for all persons connected with executive departments, including the

heads thereof. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Attempt to reduce salaries of department heads was invalid because act failed to amend this section. *State ex rel. Day v. Hall*, 129 Neb. 699, 262 N.W. 850 (1935); *State ex rel. Taylor v. Hall*, 129 Neb. 669, 262 N.W. 835 (1935).

### **81-103.01 Repealed. Laws 1957, c. 367, § 11.**

### **81-103.02 Repealed. Laws 1959, c. 266, § 1.**

### **81-103.03 Repealed. Laws 1971, LB 33, § 1.**

### **81-103.04 Repealed. Laws 1961, c. 286, § 1.**

**81-103.05 Repealed. Laws 1967, c. 402, § 1.**

**81-103.06 Repealed. Laws 1967, c. 402, § 1.**

**81-103.07 Repealed. Laws 1967, c. 402, § 1.**

**81-103.08 Repealed. Laws 1967, c. 402, § 1.**

**81-104 Expending agency; special funds; available for expenditure upon approval of estimate of expenses.**

No appropriation from any fund except the General Fund shall become available for expenditure for any expending agency until such department shall submit to the Governor estimates of the amount required for each activity to be carried on, and such estimates shall have been approved by the Governor. A statement of the estimates as allowed shall be promptly furnished the Director of Administrative Services for his guidance.

**Source:** Laws 1929, c. 51, § 4, p. 210; C.S.1929, § 81-104; R.S.1943, § 81-104.

**81-104.01 Agency; petty cash funds; how established; voucher; warrant.**

Whenever a need exists, the executive head of any agency of state government may make application to the Director of Administrative Services and the Auditor of Public Accounts to establish and maintain a petty cash fund of not less than twenty-five dollars nor more than three hundred dollars at a specific location in this state. Such application shall specify the purpose for which the fund is to be used. When the Director of Administrative Services and the Auditor of Public Accounts have approved the establishment of any 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 thereof. The Director of Administrative Services shall issue a warrant for the amount specified and deliver it to the establishing agency. The funds to initiate the petty cash fund shall be drawn from the appropriate fund of the agency based on the use of the petty cash fund. When it becomes necessary to replenish any such fund, the voucher therefor shall be accompanied by an accounting of transactions of the fund in such form and detail as the Department of Administrative Services may provide.

**Source:** Laws 1977, LB 513, § 1; Laws 1984, LB 933, § 10; Laws 1986, LB 930, § 2.

**81-105 Repealed. Laws 1965, c. 538, § 40.**

**81-106 Tax Commissioner; examination and audit of books of Auditor of Public Accounts; report to Governor and Clerk of the Legislature.**

The Tax Commissioner shall annually examine and audit or supervise and direct the examination and audit of the books, accounts, vouchers, records, and expenditures of the office of Auditor of Public Accounts and report promptly to the Governor and the Clerk of the Legislature the result of such examination and audit. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an

electronic copy of such report by making a request for it to the Tax Commissioner.

**Source:** Laws 1929, c. 51, § 6, p. 211; C.S.1929, § 81-106; Laws 1933, c. 96, § 15, p. 394; Laws 1941, c. 180, § 6, p. 703; C.S.Supp., 1941, § 81-106; Laws 1943, c. 216, § 1, p. 710; R.S.1943, § 81-106; Laws 1951, c. 310, § 1, p. 1063; Laws 1955, c. 231, § 14, p. 724; Laws 1965, c. 538, § 28, p. 1714; Laws 1979, LB 322, § 39; Laws 2012, LB782, § 164.

**Cross References**

**Legislative purpose,** Department of Administrative Services, see section 81-1101.

**81-107 Departments; assistants and employees; appointment; termination; compensation.**

The Governor shall, in each department, have the power to appoint such deputies, assistants, employees, and clerical help, as shall be necessary or essential to the economical, efficient and proper enforcement and administration of the laws of the state, and shall at the same time fix the salaries of such appointees and prescribe their duties. The Governor shall also have the power to discontinue the service of the head of any department or any employee when, in his judgment, the same is no longer necessary. Such an appointee may be required to serve in one or more departments and may be transferred from one department to another from time to time as an efficient and economical administration shall require. The Governor shall confer with the heads of the several departments who shall make recommendations to the Governor, from time to time, relative to appointments, services, salaries, and duties of the appointees for their respective departments. In providing for deputies, assistants, employees, or clerical help, the total expenditures for the biennium shall not exceed the appropriation made by the Legislature for such departments.

**Source:** Laws 1919, c. 190, § 5, p. 437; C.S.1922, § 7246; C.S.1929, § 81-108; R.S.1943, § 81-107; Laws 1945, c. 238, § 24, p. 715; Laws 1951, c. 311, § 6, p. 1068.

Possibility of discontinuance of office does not prevent officer from having definite term. State ex rel. Laughlin v. Johnson, 156 Neb. 671, 57 N.W.2d 531 (1953).

**81-108 Department heads; restrictions on office holding or employment; exceptions.**

(1) Except as provided in subsection (2) of this section, no head of any department referred to in section 81-101 shall hold any other public office or receive any profit from any other public or private employment. For purposes of this section, employment shall not be interpreted to mean membership on the board of directors of any corporation, business, or association, whether or not the head of the department receives compensation for such membership.

(2) Nothing in this section shall be interpreted as prohibiting the head of one of the departments referred to in section 81-101 from serving on any public advisory or policymaking board, commission, committee, or council.

**Source:** Laws 1919, c. 190, § 6, p. 438; C.S.1922, § 7247; C.S.1929, § 81-109; R.S.1943, § 81-108; Laws 1953, c. 335, § 3, p. 1101; Laws 1955, c. 329, § 5, p. 1027; Laws 1959, c. 424, § 2, p. 1423; Laws 1981, LB 249, § 5; Laws 1983, LB 82, § 1; Laws 1991, LB 852, § 1; Laws 2009, LB322, § 4.

**81-109 Department heads; serve without term; exception.**

Each head of a department shall serve without term.

**Source:** Laws 1919, c. 190, § 8, p. 438; C.S.1922, § 7249; C.S.1929, § 81-111; R.S.1943, § 81-109; Laws 1963, c. 335, § 4, p. 1101; Laws 1953, c. 506, § 1, p. 1613; Laws 1963, c. 507, § 2, p. 1614; Laws 1965, c. 543, § 2, p. 1730; Laws 1981, LB 249, § 6; Laws 1999, LB 36, § 37; Laws 2007, LB334, § 104.

Provision relating to fixation of term has no application to Department of Aeronautics. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

Possibility of removal from office does not prevent officer from having definite term. State ex rel. Laughlin v. Johnson, 156 Neb. 671, 57 N.W.2d 531 (1953).

Head of department herein referred to represents exactly the same head of executive department referred to in the Constitution. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**81-110 Departments; officers; oath.**

Each head of a department, deputy, and assistant shall, before entering upon the duties of his office, subscribe and take the constitutional oath of office, which shall be filed in the office of the Secretary of State.

**Source:** Laws 1919, c. 190, § 9, p. 438; C.S.1922, § 7250; C.S.1929, § 81-112; R.S.1943, § 81-110.

**Cross References**

**For a form of oath,** see Article XV, section 1, Constitution of Nebraska, and sections 11-101 and 11-101.01.

Head of department herein referred to represents exactly the same head of executive department referred to in the Constitu-

tion. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**81-111 Departments; officers; bond or insurance required.**

Each head of a department shall be bonded or insured as required by section 11-201, which bond or policy shall be filed in the office of the Secretary of State.

**Source:** Laws 1919, c. 190, § 10, p. 438; C.S.1922, § 7251; C.S.1929, § 81-113; R.S.1943, § 81-111; Laws 1947, c. 16, § 5, p. 101; Laws 1967, c. 36, § 6, p. 163; Laws 1978, LB 653, § 30; Laws 2004, LB 884, § 39.

**Cross References**

**For bond,** see section 11-102 and Chapter 11, article 2.

Head of department herein referred to represents exactly the same head of executive department referred to in the Constitu-

tion. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**81-112 Department heads; rules and regulations; power to make.**

The head of each department is empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto.

**Source:** Laws 1919, c. 190, § 11, p. 439; C.S.1922, § 7252; C.S.1929, § 81-114; R.S.1943, § 81-112.

Head of department herein referred to represents exactly the same head of executive department referred to in the Constitu-

tion. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

**81-113 Departments; business hours.**

Each department shall be open for the transaction of business at least from 8 a.m. until 5 p.m., of each day except Saturdays, Sundays, and days declared by statutory enactment or proclamation of the President or Governor to be holidays.

**Source:** Laws 1919, c. 190, § 13, p. 439; C.S.1922, § 7254; C.S.1929, § 81-115; R.S.1943, § 81-113.

**81-114 Departments; official seal.**

Each department shall adopt an official seal.

**Source:** Laws 1919, c. 190, § 14, p. 439; C.S.1922, § 7255; C.S.1929, § 81-116; R.S.1943, § 81-114.

**81-115 Repealed. Laws 1957, c. 398, § 6.**

**81-116 Repealed. Laws 1973, LB 469, § 2.**

**81-117 Department heads; employees; extra services; compensatory time off or payment; employees on hourly basis; guaranteed workweek; work period; how treated.**

(1) No head of a department or employee therein employed at a fixed compensation shall be paid for any extra services, unless expressly authorized by law; *Provided*, that when any employee is required to work more than forty hours in any week he or she may, in the discretion of the department head, be granted compensatory time off at the rate of one and one-half times the hours worked in excess of forty in subsequent weeks when his or her duties will permit, or be paid a sum equivalent to one and one-half times his or her hourly pay or his or her monthly pay prorated on an hourly basis for such overtime hours.

(2) No state agency, engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, shall be deemed to have violated sections 81-117 to 81-117.02 if a period of eight hours per day or eighty hours per fourteen consecutive calendar days is established for purposes of determining overtime compensation. Regular employees working on the hourly basis shall be paid wages equivalent to their regular wages for the usual number of work hours for days declared by statutory act or proclamation of the President of the United States or the Governor to be holidays; *Provided*, employees who have had at least one year of continuous employment with the state as hourly employees shall be guaranteed forty hours work each week.

(3) No state agency shall be deemed to have violated sections 81-117 to 81-117.02 with respect to employment in fire protection activities, law enforcement activities, including security personnel at correctional institutions, or agricultural activities, if (a) in a work period of twenty-eight consecutive days the employee receives, for four tours of duty which in the aggregate exceed two hundred hours, or (b) in the case of such employees to whom a work period of at least seven but less than twenty-eight days applies, in such work periods the employee receives, for four tours of duty which in the aggregate exceed the number of hours which bear the same ratio to the number of consecutive days of work period as two hundred hours bears to twenty-eight days, compensation at a rate not less than one and one-half times the regular rate at which the

employee is paid for all hours in excess of subdivisions (a) and (b) of this subsection.

**Source:** Laws 1919, c. 190, § 17, p. 439; C.S.1922, § 7258; C.S.1929, § 81-119; R.S.1943, § 81-117; Laws 1955, c. 231, § 15, p. 725; Laws 1959, c. 426, § 1, p. 1429; Laws 1965, c. 545, § 1, p. 1732; Laws 1977, LB 88, § 2; Laws 1981, LB 545, § 51.

This section not applicable to state officers, employees, and others whose basic work week has not been established to be forty hours. Roth v. Lieske, 189 Neb. 216, 201 N.W.2d 846 (1972).

#### **81-117.01 Terms, defined.**

As used in section 81-117, unless the context otherwise requires:

(1) Employee shall mean an employee of any state agency, department, commission, board, or office, except (a) state employees who hold a publicly elected office of the State of Nebraska, (b) state employees who serve as a chief administrative officer for a state agency, department, commission, board, or office, and (c) all academic personnel of the University of Nebraska and the state colleges;

(2) Department shall mean and include any state agency, department, commission, board, or office, specifically including the University of Nebraska and the state colleges; and

(3) Overtime pay is computed on the basis of hours worked.

**Source:** Laws 1977, LB 88, § 1.

#### **81-117.02 Compensatory time off or payment; when not applicable.**

The payment or granting of compensatory time off in lieu of payment as prescribed in sections 81-117 to 81-117.02 shall not apply to (1) agency heads, their deputies and assistants, (2) chiefs of divisions, bureaus, or comparable organizational elements, and (3) other professional, executive, and administrative employees occupying classes of positions that by custom in business, industry, and other governmental jurisdictions are normally exempt from receiving overtime pay and may require the individual to work extra and irregular hours and that acceptance of such position constitutes the employee's acknowledgment that such requirement is a part of an obligation to the state as an employee thereof. The term deputy as used in this section shall not apply to the deputy state fire marshals or deputy state sheriffs.

**Source:** Laws 1977, LB 88, § 3.

#### **81-118 Departments; receipts; payment to treasury; expenditures; when authorized.**

The gross amount of money received by every department, from whatever source, belonging to or for the use of the state, shall be paid into the state treasury, without delay, not later in any event than ten days after the receipt of the same, without any deduction on account of salaries, fees, costs, charges, expenses or claims of any description whatever. No money belonging to or for the use of the state shall be expended or applied by any department except in consequence of an appropriation made by law and upon the warrant of the Director of Administrative Services.

**Source:** Laws 1919, c. 190, § 19, p. 440; C.S.1922, § 7260; C.S.1929, § 81-120; R.S.1943, § 81-118.

**81-118.01 Electronic payment; acceptance; conditions.**

(1) Any state official or state agency may accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special, as provided by section 77-1702.

(2) The total amount of such taxes, levies, excises, duties, customs, tolls, interest, penalties, fines, licenses, fees, or assessments of whatever kind or nature, whether general or special, paid for by credit card, charge card, debit card, or electronic funds transfer shall be collected by the state official or state agency.

(3) Any state official or state agency operating a facility in a proprietary capacity may choose to accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a means of cash payment, and may adjust the price for services to reflect the handling and payment costs.

(4) The state official or state agency shall obtain, for each transaction, authorization for use of any credit card, charge card, or debit card used pursuant to this section from the financial institution, vending service company, credit card or charge card company, or third-party merchant bank providing such service.

(5) The types of credit cards, charge cards, or debit cards accepted and the payment services provided for any state official or state agency shall be determined by the State Treasurer and the Director of Administrative Services with the advice of the committee convened pursuant to subsection (5) of section 13-609. The State Treasurer and the director shall contract with one or more credit card, charge card, or debit card companies or third-party merchant banks for services on behalf of the state and those counties, cities, and political subdivisions that choose to participate in the state contract for such services. Any negotiated discount, processing, or transaction fee imposed by a credit card, charge card, or debit card company or third-party merchant bank shall be considered, for purposes of this section, as an administrative expense.

(6) A state official or state agency obtaining, for each transaction, authorization for use of any credit card or charge card used pursuant to this section may, but is not required to, impose a surcharge or convenience fee upon the person making a payment by credit card or charge card so as to wholly or partially offset the amount of any discount or administrative fees charged to the state agency, but the surcharge or convenience fee shall not exceed the surcharge or convenience fee imposed by the credit card or charge card companies or third-party merchant banks which have contracted under subsection (5) of this section. The surcharge or convenience fee shall be applied only when allowed by the operating rules and regulations of the credit card or charge card involved or when authorized in writing by the credit card or charge card company involved. When a person elects to make a payment to a state agency by credit card or charge card and such a surcharge or convenience fee is imposed, the payment of such surcharge or convenience fee shall be deemed voluntary by such person and shall be in no case refundable. If a payment is made electronically by credit card, charge card, debit card, or electronic funds transfer as part of a system for providing or retrieving information electronically, the state official or state agency shall be authorized but not required to

impose an additional surcharge or convenience fee upon the person making a payment.

(7) For purposes of this section, electronic funds transfer means the movement of funds by nonpaper means, usually through a payment system, including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system.

**Source:** Laws 1978, LB 612, § 1; Laws 1997, LB 70, § 6; Laws 2002, LB 994, § 31.

**81-118.02 State purchasing card program; created; requirements; State Treasurer and Director of Administrative Services; duties.**

(1) A state purchasing card program shall be created. The State Treasurer and the Director of Administrative Services shall determine the type of purchasing card or cards utilized in the state purchasing card program. The State Treasurer shall contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating the state purchasing card program on behalf of the state and those political subdivisions that participate in the state contract for such services. After the state purchasing card program has been in existence for two years, a joint report issued from the State Treasurer and the director shall be submitted to the Legislature and the Governor not later than January 1, 2001. The report shall include, but not be limited to, the utilization, costs, and benefits of the program. The state purchasing card program shall be administered by the Department of Administrative Services. The department may adopt and promulgate rules and regulations as needed for the implementation of the state purchasing card program. The department shall adopt and promulgate rules and regulations providing authorization instructions for all transactions. Expenses associated with the state purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

(2) Any state official, state agency, or political subdivision may utilize the state purchasing card program for the purchase of goods and services for and on behalf of the State of Nebraska.

(3) Vendors accepting the state's purchasing card shall obtain authorization for all transactions in accordance with the department's authorization instructions. Authorization shall be from the financial institution, card-issuing bank, credit card company, charge card company, debit card company, or third-party merchant bank contracted to provide such service to the State of Nebraska. Each transaction shall be authorized in accordance with the instructions provided by the department for each state official, state agency, or political subdivision.

(4) An itemized receipt for purposes of tracking expenditures shall accompany all state purchasing card purchases. In the event that an itemized receipt does not accompany such a purchase, the Department of Administrative Services shall have the authority to temporarily or permanently suspend state purchasing card purchases in accordance with rules and regulations adopted and promulgated by the department.

(5) Upon the termination or suspension of employment of an individual using a state purchasing card, such individual's state purchasing card account shall

be immediately closed and he or she shall return the state purchasing card to the department or agency from which it was obtained.

(6) No officer or employee of the state shall use a state purchasing card for any unauthorized use as determined by the department by rule and regulation.

**Source:** Laws 1999, LB 113, § 1.

**81-119 Departments; investigations; power to compel testimony and produce documents.**

Each department created by section 81-101 shall have power through its head, or any deputy, assistant, or employee, when authorized by him or her, to make a thorough investigation into all the books, papers, and affairs of any person, firm, or corporation when in the judgment of such department such examination is necessary to the proper performance of its duties and the efficient enforcement of the laws. Such department may subpoena witnesses to attend investigative hearings and have such witnesses bring with them books, accounts, and documents necessary for a thorough investigation. Such witnesses may be examined under oath. These powers shall not be used for criminal investigations.

**Source:** Laws 1919, c. 190, § 24, p. 442; C.S.1922, § 7265; C.S.1929, § 81-123; R.S.1943, § 81-119; Laws 2008, LB952, § 1.

**81-120 State agency; securities; held for safekeeping; book entry account.**

Any state agency which receives and holds securities for safekeeping purposes may hold and evidence such securities by book entry account rather than obtaining and retaining the original certificate.

**Source:** Laws 1978, LB 763, § 3; R.S.1943, (1989), § 24-604.01; Laws 1990, LB 824, § 1.

**81-121 Repealed. Laws 1951, c. 312, § 1.**

**81-122 Repealed. Laws 1951, c. 312, § 1.**

**81-123 Repealed. Laws 1986, LB 741, § 1.**

**81-124 Repealed. Laws 1986, LB 741, § 1.**

(b) STATE BUDGET

**81-125 State budget; submission to Legislature by Governor; when; contents.**

The Governor shall on or before January 15 of each odd-numbered year present to the Legislature a complete budget for all the activities of the state receiving appropriations or requesting appropriations, except that the Governor during his or her first year in office shall present such budget to the Legislature on or before February 1. Such budget shall be a tentative work program for the coming biennium, shall contain a full and itemized report of the expenditures from appropriations made by the previous Legislature and the items which the Governor deems worthy of consideration for the coming biennium, for the respective departments, offices, and institutions, and for all other purposes, and shall contain the estimated revenue from taxation, the estimated revenue from sources other than taxation, an estimate of the amount required to be raised by

taxation and the sales and income tax rates necessary to raise such amount, the revenue foregone by operation of laws in effect at the time of such report granting tax expenditures and reduced tax liabilities as identified in the report required by section 77-5731, and recommendations as to deficiency funding requirements pursuant to section 81-126. The summary of the tax expenditure report prepared pursuant to subsection (1) of section 77-385 and a summary of the report required by section 77-5731 shall be included with or appended to the budget presented to the Legislature. The Governor may make recommendations whether to continue or eliminate, in whole or in part, each tax expenditure and incentive program or to limit the duration of particular tax expenditures and incentives to a fixed number of years and shall include his or her reasoning for each recommendation, if any. The recommendations shall be transmitted to the Revenue Committee of the Legislature at the same time the Governor submits a budget as required in this section. The budget as transmitted to the Legislature shall show the estimated requirements for each activity of the state as prepared by the Department of Administrative Services and the final recommendation of the Governor. The budget shall comprise the complete report to the Legislature of all appropriations made for the current biennium and expenditures therefrom by all agencies receiving appropriations, and the report of expenditures contained in the budget shall be in lieu of all other biennial or other financial reports required by statute to the Legislature by expending agencies of appropriations and expenditures for their own activities except the biennial report of the State Treasurer and Director of Administrative Services.

**Source:** Laws 1921, c. 210, § 1, p. 745; C.S.1922, § 7268; C.S.1929, § 81-301; R.S.1943, § 81-125; Laws 1967, c. 577, § 1, p. 1907; Laws 1978, LB 526, § 2; Laws 1983, LB 169, § 3; Laws 1986, LB 258, § 24; Laws 1991, LB 82, § 4; Laws 2013, LB629, § 2; Laws 2014, LB989, § 4.

Effective date July 18, 2014.

#### Cross References

#### Constitutional provisions:

Budget bill, see Article IV, section 7, Constitution of Nebraska.

#### **81-125.01 State budget; include reserve.**

The Governor, when preparing the budget provided for in section 81-125, and the Legislature, when preparing its proposed budget, shall include a reserve requirement, calculated pursuant to subsection (1) of section 77-2715.01, of not less than three percent of the appropriations included in such budget.

**Source:** Laws 1982, LB 757, § 3; Laws 1983, LB 59, § 10; Laws 1985, LB 282, § 2.

#### **81-126 Governor; recommendations as to deficiency funding; bill form.**

(1) The Governor shall present to each regular session of the Legislature his or her recommendations as to such deficiency funding requirements as he or she deems necessary for the continued operations of the various agencies, boards, and commissions of state government. The recommendations shall be in bill form and introduced to the Legislature as recommendations of the chief administrative office of the state, based upon the financial records and knowl-

edge of the specific problems as brought to the attention of the Department of Administrative Services.

(2) For the purposes of subsection (1) of this section and the implementation of Article III, section 22, of the Constitution of Nebraska, deficiency shall mean any decrease or increase in any fund source for any budget program for the biennium in progress.

**Source:** Laws 1974, LB 1059, § 18; Laws 1978, LB 526, § 1; R.S.1943, (1984), § 50-423; Laws 1986, LB 258, § 8.

**81-127 Repealed. Laws 1967, c. 577, § 2.**

**81-128 Repealed. Laws 1965, c. 538, § 40.**

**81-129 Director of Administrative Services; investigation of all spending agencies; reports.**

It shall be the duty of the Director of Administrative Services to keep in close communication with each department, office, board, bureau, commission, or institution in the state for which money is to be appropriated and expended, including the executive and judicial departments, state colleges, university, and state institutions. The director shall make or cause to be made under his or her supervision an investigation of the needs and requirements thereof and whether the appropriations are being judiciously and economically expended for the purposes for which they were made and shall transmit to the Governor and to the expending agency a complete report of each such investigation. In making such inspections and investigations, he or she shall, at all reasonable times, have access to the offices of all state departments, boards, bureaus, commissions, and institutions and all public works of the state and may, for the purpose of obtaining information as to the operation and fiscal needs thereof, examine the books, papers, and public records therein, and the activities shall, through their proper officers, furnish such data, information, or statements as may be requested of them.

**Source:** Laws 1921, c. 210, § 5, p. 747; C.S.1922, § 7272; C.S.1929, § 81-305; R.S.1943, § 81-129; Laws 1987, LB 31, § 4.

**81-130 Repealed. Laws 1965, c. 538, § 40.**

**81-131 Repealed. Laws 1965, c. 538, § 40.**

**81-132 State budget; departmental budget estimates; duty to submit; contents.**

All departments, offices, and institutions of the state government requesting appropriations shall file in the office of the Director of Administrative Services the budget forms furnished them by the director under the provisions of sections 81-1113 and 81-1113.01. The budget forms required by this section shall be filed on or before September 15 of each even-numbered year. The forms shall show their total estimated requirements for the next biennium for each unit of their organization and activity classified as to object of expenditure. With such forms, each department, office, institution, and expending agency shall file a report showing all money received by such department, office, institution, or expending agency together with the estimated receipts for the coming biennium. Such estimates shall be accompanied by a statement in

writing giving facts and explanations of reasons for each item of increased appropriation requested. The report submitted by the Department of Health and Human Services shall include, but not be limited to, the key goals, benchmarks, and progress reports required pursuant to sections 81-3133 to 81-3133.03.

**Source:** Laws 1921, c. 210, § 8, p. 748; C.S.1922, § 7275; C.S.1929, § 81-308; R.S.1943, § 81-132; Laws 1978, LB 526, § 3; Laws 1986, LB 258, § 25; Laws 2002, Second Spec. Sess., LB 12, § 2; Laws 2012, LB949, § 2; Laws 2014, LB974, § 4.  
Effective date April 3, 2014.

**81-133 State budget; estimates and recommendations; duty of Director of Administrative Services.**

The Director of Administrative Services may, at the direction of the Governor, make further inquiry and investigation as to any item requested. He shall compile the requests of the different departments, offices, institutions and expending agencies of the state into a consolidated budget, together with his recommendation as to each item contained in the budget, and shall file the same with the Governor not later than November 15 preceding the convening of the regular session of the Legislature. He shall file with the Governor also all supporting schedules and written explanations furnished by the different agencies of the state.

**Source:** Laws 1921, c. 210, § 9, p. 748; C.S.1922, § 7276; C.S.1929, § 81-309; R.S.1943, § 81-133.

**81-134 State budget; departmental budget estimates; Governor may alter.**

The Governor shall have the right and authority to raise, lower or reject any requested appropriation or item therein, but in making any changes whatsoever, he shall give his reasons therefor in transmitting the budget to the Legislature.

**Source:** Laws 1921, c. 210, § 10, p. 749; C.S.1922, § 7277; C.S.1929, § 81-310; R.S.1943, § 81-134.

**81-135 State budget; departmental needs; duty to supply information requested by Governor.**

The departments, offices and institutions, and other agencies, shall upon request of the Governor furnish him any additional information which he may desire relative to their estimated requirements, expenditures or receipts.

**Source:** Laws 1921, c. 210, § 11, p. 749; C.S.1922, § 7278; C.S.1929, § 81-311; R.S.1943, § 81-135.

**81-136 State budget; estimates; hearing; when authorized.**

The Governor may provide for public hearings on any and all estimates included in the budget, which shall be held between November 15 and December 15 in the year preceding the regular session of the Legislature.

**Source:** Laws 1921, c. 210, § 12, p. 749; C.S.1922, § 7279; C.S.1929, § 81-312; R.S.1943, § 81-136.

**81-137 State budget; appropriations bill; increase; when authorized.**

The Governor shall also submit to the Legislature, at the same time he or she submits the budget, copies of a tentative bill for all proposed appropriations of the budget clearly itemized and properly classified, for the ensuing appropriation period, and no appropriation shall be made in excess of the items and recommendations contained in the budget unless by a three-fifths vote of the Legislature, but any item or recommendation therein contained may be rejected or decreased in amount.

**Source:** Laws 1921, c. 210, § 13, p. 749; C.S.1922, § 7280; C.S.1929, § 81-313; R.S.1943, § 81-137; Laws 1971, LB 28, § 1; Laws 1984, LB 933, § 11.

### **81-138 Appropriations; quarterly estimates required before expending.**

No appropriation shall become available for expenditure to any expending agency until such department has submitted to the Director of Administrative Services quarterly estimates of the amount required in each fiscal year's quarter for each activity to be carried on and such estimates have been approved by the Governor. Accounts shall be kept and reports rendered showing the expenditures for each such purpose.

**Source:** Laws 1921, c. 210, § 15, p. 749; C.S.1922, § 7282; C.S.1929, § 81-315; R.S.1943, § 81-138; Laws 1986, LB 258, § 26.

#### **81-138.01 Valid encumbrance; what constitutes.**

For appropriation and expenditure purposes, encumbrances represent financial obligations which are chargeable to the current biennium's appropriation and for which a part of that appropriation is reserved. Encumbrances which are established in one biennium to be liquidated in a subsequent biennium shall be limited to the following types of transactions:

(1) A purchase order is issued, but the goods and accompanying invoice were not received and paid during the same biennium;

(2) Goods or services were received, but an invoice has not been received and paid;

(3) Goods or services and an invoice were received, but payment could not be made during the same biennium;

(4) Salaries have been earned and are payable to the employees, but have not been paid as of the end of the biennium as a result of pay periods not being consistent with the end of the biennium, except that higher education institutions may encumber payrolls for the remainder of the summer session which is in progress at the end of the state's biennium if they have been budgeted and appropriated in such manner; and

(5) A written agreement for a grant or award to distribute aid was signed but was not paid during the same biennium.

**Source:** Laws 1979, LB 233, § 1; Laws 1986, LB 258, § 27; Laws 1991, LB 651, § 1.

#### **81-138.02 Contracts; not valid encumbrances; exception.**

Contracts, other than a purchase order, for goods or services to be provided in a subsequent biennium do not represent valid encumbrances of current biennium appropriations and will require specific reappropriation by the Legis-

lature. Only that portion of a contract which meets the criteria established in subdivision (2) of section 81-138.01 may be encumbered.

**Source:** Laws 1979, LB 233, § 2; Laws 1986, LB 258, § 28.

**81-138.03 Encumbrance; when paid; lapse.**

An encumbrance established in one biennium may only be carried over into the subsequent biennium. Any encumbrance shall be paid during the first biennium following the biennium in which established or shall be lapsed to the fund from which appropriated at the end of the first fiscal period following the biennium in which such encumbrance is established.

**Source:** Laws 1979, LB 233, § 3; Laws 1986, LB 258, § 29.

**81-138.04 State budget officer; review encumbrances; lapse.**

At the end of each biennium, the state budget officer shall review all encumbrances established in the preceding biennium and take appropriate action to lapse those encumbrances which do not meet the provisions of sections 81-138.01 to 81-138.04.

**Source:** Laws 1979, LB 233, § 4; Laws 1986, LB 258, § 30.

(c) PRINTING AND OFFICE SUPPLIES

**81-139 Repealed. Laws 1945, c. 242, § 1.**

**81-140 Repealed. Laws 1951, c. 312, § 1.**

**81-141 Repealed. Laws 1951, c. 312, § 1.**

**81-142 Repealed. Laws 1989, LB 16, § 1.**

**81-143 Repealed. Laws 1951, c. 59, § 1.**

**81-144 Repealed. Laws 1951, c. 59, § 1.**

(d) MATERIEL DIVISION OF ADMINISTRATIVE SERVICES

**81-145 Materiel division; terms, defined.**

As used in sections 81-145 to 81-162, unless the context otherwise requires:

(1) Materiel division shall mean the head of the division of the state government charged with the administration of sections 81-145 to 81-162 and 81-1118 to 81-1118.06, which division shall be a part of and subject to the supervision of the office of the Director of Administrative Services;

(2) Personal property shall include all materials, supplies, furniture, equipment, printing, stationery, automotive and road equipment, and other chattels, goods, wares, and merchandise whatsoever;

(3) Using agencies shall mean and include all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations; and

(4) Lease or contract shall mean an agreement entered into by the state or using agency with another party whereby, for a stated consideration, the state

or using agency is to receive the personal property or use thereof furnished by the other party.

**Source:** Laws 1943, c. 215, § 1, p. 704; R.S.1943, § 81-145; Laws 1963, c. 508, § 1, p. 1616; Laws 1965, c. 538, § 29, p. 1714; Laws 1975, LB 359, § 3; Laws 1975, LB 447, § 1; Laws 1992, LB 1241, § 12; Laws 2000, LB 654, § 5.

**81-146 Sections; applicability.**

Sections 81-145 to 81-162 and 81-1118 to 81-1118.03 shall not apply:

(1) To the erection, construction, or original equipment of any building or addition thereto, to the construction of any road or bridge, or to the performance of any like work;

(2) To the purchase or use of the products of the labor of the inmates of any charitable, reformatory, or penal institution of the state, but section 83-146 shall apply to such products; or

(3) To the leasing by the state or a using agency of real property.

**Source:** Laws 1943, c. 215, § 2, p. 705; R.S.1943, § 81-146; Laws 1957, c. 368, § 1, p. 1294; Laws 1963, c. 508, § 2, p. 1616; Laws 1975, LB 359, § 4; Laws 1981, LB 381, § 1; Laws 1992, LB 1241, § 13.

**81-147 Materiel administrator; appointment.**

The materiel administrator shall be appointed by the Director of Administrative Services.

**Source:** Laws 1943, c. 215, § 3, p. 705; R.S.1943, § 81-147; Laws 1959, c. 427, § 1, p. 1430; Laws 1969, c. 780, § 1, p. 2954.

**81-148 Materiel administrator; salary.**

The compensation of the head of the materiel division, who shall be designated as the materiel administrator, shall be fixed by the Director of Administrative Services subject to availability of appropriations.

**Source:** Laws 1943, c. 215, § 4, p. 705; R.S.1943, § 81-148; Laws 1945, c. 223, § 2, p. 668; Laws 1951, c. 338, § 6, p. 1118; Laws 1957, c. 368, § 2, p. 1294; Laws 1963, c. 508, § 3, p. 1616; Laws 1967, c. 612, § 2, p. 2059; Laws 1969, c. 780, § 2, p. 2955.

**81-148.01 Repealed. Laws 1961, c. 286, § 1.**

**81-148.02 Repealed. Laws 1967, c. 402, § 1.**

**81-149 Materiel administrator; qualifications.**

The materiel administrator shall have had at least three years practical experience, in the ten years immediately preceding appointment, as an executive in a regularly organized purchasing department of some branch of government, municipal, state, or federal, or of some private business firm or corporation. He or she shall not be, at any time during his or her term of office, connected, interested, or otherwise concerned, directly or indirectly, with any person, partnership, limited liability company, firm, association, corporation, or other vendor, agent, or intermediary, from or through whom any purchases

or contracts for purchases shall be made by him or her during his or her incumbency in office.

**Source:** Laws 1943, c. 215, § 5, p. 705; R.S.1943, § 81-149; Laws 1963, c. 508, § 5, p. 1617; Laws 1975, LB 447, § 2; Laws 1993, LB 121, § 521; Laws 2000, LB 654, § 6.

#### **81-150 Materiel administrator; oath.**

Before entering upon the discharge of his or her duties, the materiel administrator shall take and subscribe an oath, to be filed in the office of the Secretary of State, to the effect:

(1) That he or she will support the Constitution of the United States and the Constitution of Nebraska;

(2) That he or she will faithfully and impartially discharge the duties of his or her office; and

(3) That he or she is not then and will not be, at any time during his or her term of office, connected, interested, or otherwise concerned, directly or indirectly, with any person, partnership, limited liability company, firm, association, corporation, or other vendor, agent, or intermediary from or through whom any purchases or contracts for purchase, shall be made by him or her during his or her incumbency in office.

**Source:** Laws 1943, c. 215, § 6, p. 706; R.S.1943, § 81-150; Laws 1993, LB 121, § 522; Laws 2000, LB 654, § 7.

#### **Cross References**

For form of oath, see sections 11-101 to 11-101.03.

#### **81-151 Materiel administrator; bond or insurance.**

Before entering upon the discharge of his or her duties, the materiel administrator shall be bonded or insured as required by section 11-201. Neither expiration of term of office nor removal therefrom shall operate as a discharge of the bond or termination of the insurance, but it shall remain in full force and effect as provided by law. The premium shall be paid by the state.

**Source:** Laws 1943, c. 215, § 7, p. 706; R.S.1943, § 81-151; Laws 1978, LB 653, § 31; Laws 2000, LB 654, § 8; Laws 2004, LB 884, § 40.

#### **81-152 Repealed. Laws 1963, c. 508, § 15.**

#### **81-153 Materiel division; powers and duties; enumerated.**

The materiel division shall have the power and duty to:

(1) Purchase or contract for, in the name of the state, the personal property required by the using agencies and the state;

(2) Promulgate, apply, and enforce standard specifications established as provided in section 81-154;

(3) Sell and dispose of personal property that is not needed by the state or its using agencies as provided in section 81-161.04 or initiate trade-ins when determined to be in the best interest of the state;

(4) Determine the utility, quality, fitness, and suitability of all personal property tendered or furnished;

(5) Make rules and regulations consistent with sections 81-145 to 81-171 and 81-1118 to 81-1118.06 to carry into effect the provisions thereof. Such rules and regulations shall include provisions for modifying and terminating purchase contracts and the cost principles to be used in such modification or termination;

(6) Employ such clerical, technical, and other assistants as may be necessary to properly administer such sections, fix their compensation, and prescribe their duties in connection therewith, subject to existing laws and appropriations;

(7) Allow the purchase of personal property without competitive bidding when the price has been established by the federal General Services Administration or to allow the purchase of personal property by participation in a contract competitively bid by another state or group of states, a group of states and any political subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states. The division may also give consideration to a sheltered workshop pursuant to section 48-1503 in making such purchases;

(8) Enter into any personal property lease agreement when it appears to be in the best interest of the state; and

(9) Negotiate purchases and contracts when conditions exist to defeat the purpose and principles of public competitive bidding.

**Source:** Laws 1943, c. 215, § 9, p. 706; R.S.1943, § 81-153; Laws 1947, c. 310, § 1(1), p. 942; Laws 1955, c. 231, § 16, p. 725; Laws 1957, c. 368, § 3, p. 1295; Laws 1963, c. 508, § 6, p. 1617; Laws 1974, LB 1054, § 31; Laws 1975, LB 359, § 5; Laws 1975, LB 447, § 3; Laws 1981, LB 381, § 2; Laws 1984, LB 540, § 12; Laws 1992, LB 1241, § 14; Laws 2000, LB 654, § 9; Laws 2001, LB 96, § 1; Laws 2014, LB974, § 5.  
Effective date April 3, 2014.

#### Cross References

**Surplus property of United States**, duties of Department of Correctional Services, see section 81-909.

These sections held not applicable to the Board of Regents other officers or agencies. Board of Regents v. Exon, 199 Neb. which cannot delegate its constitutional powers and duties to 146, 256 N.W.2d 330 (1977).

#### **81-153.01 Repealed. Laws 1963, c. 508, § 15.**

#### **81-154 Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids.**

The materiel division shall establish and maintain standard specifications for personal property purchased in the name of the state. The materiel division shall enlist the cooperation and assistance of the using agencies in the establishment, maintenance, and revision of standard specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of personal property may be continuously accomplished. All such standard specifications shall be so drawn that it will be possible for three or more manufacturers, vendors, or suppliers to submit competitive bids. If a requisition for personal property exceeds twenty-five thousand dollars and bids cannot be obtained from three bidders, then the standard specifications of the personal property upon which bids are sought shall be reviewed by the materiel division and the using agencies involved. If it is determined by the materiel

division, because of the special nature of the personal property sought to be purchased or leased or for any other reason, that the standard specifications should remain as written, bids may be accepted from a fewer number of bidders than three with the approval of the Governor or his or her designated representative.

**Source:** Laws 1943, c. 215, § 10, p. 707; R.S.1943, § 81-154; Laws 1963, c. 508, § 7, p. 1618; Laws 1975, LB 359, § 6; Laws 1981, LB 381, § 3; Laws 1984, LB 933, § 12; Laws 1992, LB 1241, § 15; Laws 1997, LB 314, § 5; Laws 2000, LB 654, § 10; Laws 2007, LB256, § 4.

**81-154.01 Materiel division; University of Nebraska; purchase agreements.**

The materiel division shall make available copies of current purchase agreements and standard specifications to the University of Nebraska. The University of Nebraska may utilize such purchase agreements if it determines that it would be to its advantage to do so. The materiel division may utilize purchase agreements entered into by the University of Nebraska upon a finding by the materiel administrator that the use of such agreements would be in the best interests of the state. For purposes of this section, purchase agreements do not include contracts for personal services subject to sections 73-301 to 73-307.

**Source:** Laws 1981, LB 381, § 4; Laws 2000, LB 654, § 11.

**81-155 Repealed. Laws 1965, c. 423, § 1.**

**81-156 Laboratory tests; fee.**

The fee, required by any state or other laboratory for any analysis or test made by any prospective vendor prior to the award of a contract, shall be paid by such prospective vendor.

**Source:** Laws 1943, c. 215, § 12, p. 708; R.S.1943, § 81-156.

**81-157 Repealed. Laws 1963, c. 508, § 15.**

**81-158 Repealed. Laws 1963, c. 508, § 15.**

**81-159 Requisitions by using agency; procedures used by materiel division.**

Each using agency shall, at the time, in the form, and for the periods prescribed by the materiel division, present to it detailed requisition for all personal property to be purchased or leased. The materiel division shall then arrange such schedules as are included in or covered by the requisition for purchase and contract and for advertising them in the manner best calculated to attract competition and advantageous price as set forth in sections 81-145 to 81-162 and 81-1118 to 81-1118.06. It shall prescribe the terms and conditions for delivery, inspections, and all other details thereof.

**Source:** Laws 1943, c. 215, § 15, p. 708; R.S.1943, § 81-159; Laws 1963, c. 508, § 8, p. 1618; Laws 1975, LB 359, § 7; Laws 1981, LB 381, § 5; Laws 1992, LB 1241, § 16; Laws 2000, LB 654, § 12.

**81-160 Repealed. Laws 1963, c. 508, § 15.**

**81-161 Competitive bids; award to lowest responsible bidder; elements considered; energy star certified appliances.**

(1) All purchases, leases, or contracts which by law are required to be based on competitive bids shall be made to the lowest responsible bidder, taking into consideration the best interests of the state, the quality or performance of the personal property proposed to be supplied, its conformity with specifications, the purposes for which required, and the times of delivery. In determining the lowest responsible bidder, in addition to price, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts;

(e) The previous and existing compliance by the bidder with laws relating to the contract;

(f) The life-cycle costs of the personal property in relation to the purchase price and specific use of the item;

(g) The performance of the personal property, taking into consideration any commonly accepted tests and standards of product usability and user requirements;

(h) Energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment;

(i) The information furnished by each bidder concerning life-cycle costs between alternatives for all classes of equipment, evidence of expected life, repair and maintenance costs, and energy consumption on a per-year basis;

(j) The results of the United States Environmental Protection Agency tests on fleet performance of motor vehicles. Each bidder shall furnish information relating to such results; and

(k) Such other information as may be secured having a bearing on the decision to award the contract.

(2) Any appliance purchased or leased pursuant to this section shall be energy star certified, except that the materiel administrator may exempt the purchase or lease of an appliance from this subsection if he or she determines that the cost of compliance would exceed the projected energy cost savings.

(3) All political subdivisions may follow the procurement principles set forth in this section if they are deemed applicable by the official authorized to make purchases for such political subdivision.

(4) For purposes of this section, energy star certified means approval of energy usage by the United States Environmental Protection Agency and the United States Department of Energy. Such approval may be signified by the display of the energy star label.

**Source:** Laws 1943, c. 215, § 17, p. 709; R.S.1943, § 81-161; Laws 1963, c. 508, § 9, p. 1619; Laws 1969, c. 780, § 3, p. 2955; Laws 1975, LB 359, § 8; Laws 1980, LB 954, § 60; Laws 1992, LB 1241, § 17; Laws 2000, LB 654, § 13; Laws 2010, LB978, § 1.

#### **81-161.01 Competitive bids; time requirements; waiver.**

A minimum of fifteen days shall elapse between the time formal bids are advertised and the time of their opening, except that this requirement may be waived by the materiel administrator upon a showing by the using agency of an emergency, sole or specialized source, or other unique requirement.

**Source:** Laws 1963, c. 508, § 10, p. 1620; Laws 1975, LB 447, § 4; Laws 1981, LB 381, § 6; Laws 2000, LB 654, § 14.

**81-161.02 Competitive bids; rejection by materiel division; grounds; new bids.**

Any or all bids may be rejected by the materiel division. The materiel division may reject the bid of any bidder who has failed to perform a previous contract with the state. In any case where competitive bids are required and all bids are rejected, and the proposed purchase is not abandoned, new bids shall be solicited.

**Source:** Laws 1963, c. 508, § 11, p. 1620; Laws 2000, LB 654, § 15.

**81-161.03 Direct purchases, contracts, or leases; approval required, when; report required; materiel division; duties; Department of Correctional Services; purchases authorized.**

The materiel division may, by written order, permit purchases, contracts, or leases to be made by any using agency directly with the vendor or supplier whenever it appears to the satisfaction of the materiel division that, because of the unique nature of the personal property, the price in connection therewith, the quantity to be purchased, the location of the using agency, the time of the use of the personal property, or any other circumstance, the interests of the state will be served better by purchasing or contracting direct than through the materiel division.

Such permission shall be revocable and shall be operative for a period not exceeding twelve months from the date of issue. Using agencies receiving such permission shall report their acts and expenditures under such orders to the materiel division in writing and furnish such agent with proper evidence that competition has been secured at such time and covering such period as may be required by the materiel division.

The materiel division shall adopt and promulgate rules and regulations establishing criteria which must be met by any agency seeking direct market purchase authorization. Purchases for miscellaneous needs may be made directly by any agency without prior approval from the materiel division for purchases of less than ten thousand dollars if the agency has completed a certification program as prescribed by the materiel division.

The Department of Correctional Services may purchase raw materials, supplies, component parts, and equipment perishables directly for industries established pursuant to section 83-183, whether such purchases are made to fill specific orders or for general inventories. Any such purchase shall not exceed twenty-five thousand dollars. The department shall comply with the bidding process of the materiel division and shall be subject to audit by the materiel division for such purchases.

**Source:** Laws 1943, c. 215, § 16, p. 709; R.S.1943, § 81-160; Laws 1963, c. 508, § 12, p. 1620; Laws 1975, LB 359, § 9; Laws 1975, LB

447, § 5; Laws 1981, LB 381, § 7; Laws 1984, LB 933, § 13; Laws 1987, LB 354, § 1; Laws 1992, LB 1241, § 18; Laws 1997, LB 314, § 6; Laws 2000, LB 654, § 16; Laws 2007, LB256, § 5.

**81-161.04 Materiel division; surplus property; sale; procedure; proceeds of sale, how credited.**

(1) Whenever any using agency has any personal property for which it no longer has any need or use, it shall notify the materiel division in writing setting forth a description of the property and the approximate length of time that the property has been in the possession of the using agency. The materiel division shall appraise the property and notify all other using agencies of the state that the materiel division has the property for sale and that the property can be bought at the appraised price. No property will be sold until first offered to using agencies as provided by this section unless the property is unusable. If the materiel division fails to receive an offer from any using agency, it may sell or dispose of the property by any method which is most advantageous to the State of Nebraska, including auction, sealed bid, private or public sale, or trade-in for other property, with priorities given to the other political subdivisions. All sales shall be made in the name of the State of Nebraska. The materiel division shall charge an administrative fee for the disposition of surplus property. Such administrative fee shall be a percentage of the amount of the sale of the surplus property. In the event surplus property is determined to have no market value, the materiel administrator may waive the administrative fee.

(2) Except as otherwise provided in this subsection, the proceeds of the sales shall be deposited with the State Treasurer and credited to the General Fund unless the using agency certifies to the materiel division that the property was purchased in part or in total from either cash accounts or federal funds or from a percentage of such accounts or funds, in which case the proceeds of the sale to that extent shall be credited to the cash or federal account in the percentage used in originally purchasing the property. The cost of selling surplus property shall be deducted from the proceeds of the surplus property sold. The proceeds received from the sale of passenger-carrying motor vehicles originally purchased with money from the General Fund, other than passenger-carrying motor vehicles used by the Nebraska State Patrol, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Transportation Services Bureau Revolving Fund. The proceeds received from the sale of passenger-carrying motor vehicles used by the Nebraska State Patrol, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Nebraska State Patrol Vehicle Replacement Cash Fund. The proceeds received from the sale of micrographic equipment, other than that of the University of Nebraska and state colleges, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Records Management Micrographics Services Revolving Fund. The proceeds received from the sale of aircraft, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Department of Aeronautics Cash Fund.

**Source:** Laws 1943, c. 215, § 9, p. 706; R.S.1943, § 81-153; Laws 1947, c. 310, § 1(2), p. 943; Laws 1951, c. 313, § 1, p. 1071; R.R.S.1943, § 81-153.01; Laws 1963, c. 508, § 13, p. 1621; Laws 1969, c. 781,

§ 1, p. 2958; Laws 1972, LB 1452, § 1; Laws 1975, LB 447, § 6; Laws 1979, LB 559, § 17; Laws 1979, LB 590, § 1; Laws 1995, LB 381, § 1; Laws 2000, LB 654, § 17.

**81-161.05 Materiel division or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty.**

Neither the materiel division nor any employee under its direction shall be financially interested or have any beneficial personal interest, directly or indirectly, in the purchase or leasing of any personal property nor in any firm, partnership, limited liability company, corporation, or association furnishing personal property. No such person shall receive or accept directly or indirectly from any person, firm, limited liability company, or corporation submitting any bid or to whom a contract may be awarded by rebate, gift, or otherwise, any money or other thing of value whatsoever or any promise, obligation, or contract for future reward, or compensation. Any person who violates this section shall be guilty of a Class IV felony and shall be subject to forfeiture of his or her office or position.

**Source:** Laws 1963, c. 508, § 14, p. 1621; Laws 1975, LB 359, § 10; Laws 1977, LB 39, § 265; Laws 1992, LB 1241, § 19; Laws 1993, LB 121, § 523.

**81-161.06 State Surplus Property Revolving Fund; created; use; investment.**

There is hereby created the State Surplus Property Revolving Fund. The fund shall be administered by the materiel division of the Department of Administrative Services. The fund shall consist of money collected from the sale of surplus property and fees from such sales and shall be used to reimburse the appropriate funds from the proceeds of such sales and pay for expenses incurred by the division for the sale of the property.

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, § 6; Laws 1995, LB 7, § 96.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-162 Purchases or leases; form of contract.**

Contracts for purchases or leases may be made in any of the following forms:

- (1) For the furnishing of specific personal property at specific prices;
- (2) For the furnishing of personal property, according to the specifications, at a fixed rate for a minimum quantity, subject to furnishing a greater quantity at the same or a lesser rate; or
- (3) For the furnishing of personal property, according to the specifications without a stated minimum at a rate stated, commonly known as a price agreement.

The form of the contract to be used in any case shall be subject to the discretion of the materiel division.

**Source:** Laws 1943, c. 215, § 18, p. 709; R.S.1943, § 81-162; Laws 1975, LB 359, § 11; Laws 1992, LB 1241, § 20.

**81-163 Repealed. Laws 1963, c. 508, § 15.**

**81-163.01 Repealed. Laws 2000, LB 654, § 58.**

(e) CENTRAL MAILING ROOM

**81-164 Central mailing room; equipment required.**

The materiel division, under the direction of the Director of Administrative Services, shall operate and maintain a central mailing room. The central mailing room shall be equipped with postage metering machines and postal handling equipment for the purpose of metering official mail of the state and employ such help as may be necessary for the efficient operation of such mailing room.

**Source:** Laws 1943, c. 218, § 1, p. 714; R.S.1943, § 81-164; Laws 2000, LB 654, § 18.

**81-165 Official outgoing mail to be metered; members of Legislature, when exempt.**

Beginning July 1, 1943, all official outgoing mail of each state officer, department, commission, board, bureau, court or other agency, occupying quarters in the Capitol Building in Lincoln, Nebraska, or in any state building which may hereafter be located adjacent thereto, shall be delivered unstamped to such central mailing room to be metered and dispatched; *Provided, however*, members of the Legislature shall be specifically exempt from the provisions of sections 81-164 to 81-171 for and during the time the Legislature is not in actual session. All employees of such state officers, departments, commissions, boards, bureaus, courts or other agencies, when working away from the Capitol Building, shall use the metered mail for outgoing mail so far as may be possible, consistent with postal regulations.

**Source:** Laws 1943, c. 218, § 2, p. 715; R.S.1943, § 81-165; Laws 1945, c. 225, § 1, p. 669.

**81-166 Postage records; requirements.**

The materiel division shall keep an accurate record of the postage used by each state officer, department, commission, board, bureau, court, or other agency and charge such state officer, department, commission, board, bureau, court, or other agency with the exact amount of postage so used plus administrative and operational costs. Administrative and operational costs shall be charged as a percentage of the amount charged for postage. Such charge shall, as nearly as may be practical, reflect the actual administrative and operational costs of the central mailing room and its related activities. The division shall submit electronically an annual report to the Appropriations Committee of the Legislature of the percentage charge. Rates planned for the coming fiscal year shall be included in the instructions for completion of budget request forms as annually prepared by the Department of Administrative Services' budget divi-

sion. If rate revisions are required during the fiscal year to reflect changes in the administrative and operational costs, these revisions shall be announced to each state officer, department, commission, board, bureau, court, or other agency at least thirty days prior to their use.

**Source:** Laws 1943, c. 218, § 3, p. 715; R.S.1943, § 81-166; Laws 1978, LB 961, § 1; Laws 1981, LB 381, § 9; Laws 2000, LB 654, § 19; Laws 2012, LB782, § 165.

**81-167 Advances for postage; monthly statement by materiel division; remittance by warrant; overdrafts not allowed.**

Each state officer, department, commission, board, bureau, court or other agency, occupying quarters in the Capitol Building or any state building which may hereafter be located adjacent thereto, shall advance to the materiel division of the Department of Administrative Services, a sum estimated to be sufficient to cover his, her or its postage for at least one month but never to exceed two months' average use as determined by the materiel division. On the first day of each month, the materiel division shall send a statement to each state officer, department, commission, board, bureau, court or other agency of their mailings during the month, and each state officer, department, commission, board, bureau, court or other agency shall remit by warrant to the materiel division the amount of such statement. No overdrafts shall be permitted. If the original amount advanced to the materiel division for postage is not sufficient to cover the postage, additional advances shall be made by the respective state officer, department, commission, board, bureau, court or other agency.

**Source:** Laws 1943, c. 218, § 4, p. 715; R.S.1943, § 81-167; Laws 1969, c. 782, § 1, p. 2959; Laws 1971, LB 28, § 2.

**81-168 Central mailing room; employees; hours staggered.**

The materiel division under the direction of the Director of Administrative Services shall stagger the hours of employees in the central mailing room so that the central mailing room is open until the last mail departs from the Capitol Building.

**Source:** Laws 1943, c. 218, § 5, p. 716; R.S.1943, § 81-168; Laws 2000, LB 654, § 20.

**81-169 Rules and regulations; authority of materiel division.**

The materiel division under the direction of the Director of Administrative Services may make such reasonable rules and regulations as may be deemed necessary for the administration of sections 81-164 to 81-171.

**Source:** Laws 1943, c. 218, § 6, p. 716; R.S.1943, § 81-169.

**81-170 Repealed. Laws 1963, c. 508, § 15.**

**81-171 Delivery of mail to mailing room for unofficial business; violation; penalty.**

It shall be unlawful to deliver any mail to any state mailing room, to be metered and dispatched, or to deposit in the United States mail any envelope, metered by a postage metering machine of the State of Nebraska, for any purpose or upon any business other than the dispatch of mail appertaining

strictly to official business of the State of Nebraska. Any person violating this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars.

**Source:** Laws 1943, c. 218, § 8, p. 716; R.S.1943, § 81-171; Laws 2000, LB 654, § 21.

**81-172 Repealed. Laws 1963, c. 508, § 15.**

(f) DEFERRED BUILDING RENEWAL AND MAINTENANCE

**81-173 Terms, defined.**

For purposes of the Deferred Building Renewal Act and sections 85-106 and 85-304, unless the context otherwise requires:

(1) Renewal work means any (a) deferred or preventive maintenance projects that will restore facilities and utility systems as closely as practicable to their original constructed condition as defined by the Task Force for Building Renewal, (b) projects that will bring facilities into compliance with current fire safety, life safety, and hazardous materials abatement requirements, and (c) projects that will bring facilities into compliance with the federal Americans with Disabilities Act of 1990. The standard of quality maintenance shall be set after consideration of the facility users, geographical location, condition, and physical analysis of each building;

(2) Deferred maintenance means any measures taken to: (a) Correct or repair structural or mechanical defects that would endanger the integrity of a building or its components or allow unwanted penetration of the building by the outdoor elements; (b) correct or repair structural, mechanical, or other defects in a building or its components or utility systems which endanger the lives or health of state employees or the general public; (c) bring a building into compliance with the federal Americans with Disabilities Act of 1990; (d) correct a waste of energy, including minor repairs, alteration and maintenance painting, cost of materials, hiring of building maintenance personnel, and other necessary expenses for the maintenance of roofs, exterior walls, retaining walls, foundations, flooring, ceilings, partitions, doors, building hardware, windows, plaster, structural ironwork, screens, plumbing, heating, air-handling, and air conditioning equipment, or electrical systems, but excluding decorative finish or furnishing or building additions; or (e) conduct an energy audit;

(3) Preventive maintenance means any measures taken to maintain the structural or mechanical integrity of a building or its components including those measures listed in subdivision (2) of this section; and

(4) Task force means the Task Force for Building Renewal.

**Source:** Laws 1977, LB 309, § 1; Laws 1980, LB 835, § 1; Laws 1982, LB 604, § 1; Laws 1993, LB 369, § 1; Laws 1998, LB 1100, § 14; Laws 1998, LB 1129, § 15; Laws 2011, LB228, § 1.

**81-174 Task Force for Building Renewal; established; purpose; consultants; appointment; how selected.**

There is hereby established the Task Force for Building Renewal to carry out the Deferred Building Renewal Act. The Director of Administrative Services

shall appoint an administrator as the chief officer of the task force. The administrator shall retain not more than four consultants to assist him or her in the administration of the Deferred Building Renewal Act. Each task force member shall be selected on the basis of his or her ability to administer and accomplish efficient building maintenance and shall have knowledge of and experience in the contracting of construction projects and the maintaining of buildings. Members shall be selected so that the task force represents diversified expertise needed for maintenance judgments and, if practical, each member should reside at a location that allows efficient visitation of state-owned buildings.

**Source:** Laws 1977, LB 309, § 2; Laws 1980, LB 835, § 2; Laws 1997, LB 314, § 8; Laws 1998, LB 1129, § 16.

**81-175 Task force; members; compensation.**

The compensation of the members of the task force shall be established by the Governor on a per diem basis, and they shall work the days and hours required to accomplish the task. Members of the task force 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 1977, LB 309, § 3; Laws 1981, LB 204, § 168.

**81-176 Task force; review; report.**

The task force shall conduct a review of the plans, specifications, and other construction and repair documents and ongoing maintenance requirements for real property, structures, or improvements that may be proposed to be made available to any state agency, board, or commission by means of gift, bequest, or devise and any acquisition of real property or structures by any state agency, board, or commission with the proceeds of donations, gifts, bequests, devises, or grants from individuals, organizations, corporations, foundations, or similar entities or from nonfederal governmental agencies, if the combined proceeds of such donations, gifts, bequests, devises, or grants exceed two hundred fifty thousand dollars, pursuant to section 81-1108.33. The task force shall submit a report of its findings and recommendations to the Committee on Building Maintenance.

**Source:** Laws 1999, LB 369, § 2; Laws 2011, LB264, § 3; Laws 2012, LB761, § 1.

**81-177 State agency; inspection of facilities; report; contents; referred to task force.**

Each state agency operating or managing state-owned buildings, utilities, or grounds shall make a detailed inspection of facilities under its care to determine accurately what renewal work items exist and the probable cost and time required for doing the work. A detailed report of the findings shall be made to the Governor, listing for each building, utility, or grounds improvement, the individual work items with estimated quantities and unit prices. Such report shall also include a listing of projects needed in state-owned structures to accommodate persons with handicaps as provided in sections 81-5,147 and 81-5,148. The report shall state which work items are recommended to be done under contract and which are proposed to be done by agency forces with an

estimate of hours of labor and labor costs. The Governor shall refer the report to the task force for its study and recommendations pursuant to section 81-178.

**Source:** Laws 1977, LB 309, § 5; Laws 1980, LB 835, § 4; Laws 1995, LB 8, § 1; Laws 2002, LB 93, § 21.

**81-178 Report; classification of work items; task force, duties.**

The report required by section 81-177 shall classify work items by urgency of need using three classes defined as follows:

Class I — items for immediate action to (1) provide safety and protection against costly damage to buildings or their utility systems, (2) make structural, mechanical, or other repairs to buildings or their components or utility systems which are an immediate danger to the lives or health of state employees or the general public, or (3) bring buildings into compliance with the federal Americans with Disabilities Act of 1990;

Class II — items of imperative need to correct problems that if neglected will quickly deteriorate further into Class I items that must be done to provide efficient and safe use of the facility or system; and

Class III — additional items necessary to fully renew or provide efficient and safe use of the facility or system.

The task force shall recommend to the Governor the classification of projects and priorities to be established for grants within the classifications. The Governor shall make such classification of projects and establish such priorities as shall be best calculated to achieve the purposes of the Deferred Building Renewal Act.

**Source:** Laws 1977, LB 309, § 6; Laws 1979, LB 322, § 40; Laws 1980, LB 835, § 5; Laws 1982, LB 604, § 2; Laws 1993, LB 369, § 2; Laws 1998, LB 1129, § 17.

**81-179 Building Renewal Allocation Fund; created; use; investment.**

(1) There is hereby created under the control of the Governor, for allocation to building renewal projects of the various agencies, a fund to be known as the Building Renewal Allocation Fund. The fund shall contain the revenue from the special privilege tax as provided in section 77-2602 and such other money as is appropriated by the Legislature. Such appropriation is declared to consist of building renewal funds which shall be kept separate and distinct from the program continuation funds and project construction funds.

(2) Separate subfunds, subprograms, projects, or accounts shall be established to separately account for any expenditures on state buildings or facilities to comply with the federal Americans with Disabilities Act of 1990. A minimal amount of the funds contained in the subfunds, subprograms, projects, or accounts may be used for planning and evaluation of buildings and facilities.

(3) The budget division of the Department of Administrative Services may administratively transfer funds to appropriate accounting entities to correctly account for the operating expenditures. A separate fund, cash fund, project, or other account may be administratively established for such purpose.

(4) 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 1977, LB 309, § 7; Laws 1993, LB 369, § 3; Laws 1994, LB 1066, § 96; Laws 1995, LB 530, § 2; Laws 1996, LB 1190, § 16; Laws 1998, LB 1100, § 15; Laws 2000, LB 1349, § 2; Laws 2002, LB 1310, § 11; Laws 2003, LB 410, § 1; Laws 2004, LB 1090, § 1; Laws 2007, LB323, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-180 Building renewal funds; expenditures; allocation of funds; procedure.**

The Building Renewal Allocation Fund, State Building Renewal Assessment Fund, University Building Renewal Assessment Fund, and State College Building Renewal Assessment Fund shall only be expended for the purpose of building renewal work except as appropriated by the Legislature to meet the cost of administering the Deferred Building Renewal Act or as otherwise provided. In each fiscal year, expenditures for the cost of administering the act from any one of such funds shall be proportional to the revenue credited to such fund in the preceding fiscal year in comparison to the total revenue credited to all of such funds in such year. As applicable, each agency shall be allocated funds as directed by the Governor using the system of priorities established in section 81-178. In the making of allocations from such funds, the Governor shall follow a policy that first considers the use of private enterprise services for deferred maintenance projects while using state employees primarily for the performance of preventive maintenance. When such preventive maintenance is of a nature that only occasional highly technical attention is scheduled, primary consideration shall be given to using contractual services. The task force shall review all such contracts for such services from private enterprises.

**Source:** Laws 1977, LB 309, § 8; Laws 1980, LB 835, § 7; Laws 1982, LB 604, § 3; Laws 1998, LB 1100, § 16; Laws 2003, LB 410, § 2.

**81-181 Agency; proposed building renewal projects report; submitted, when; contents; allocation of funds; conditions.**

(1) Not later than September 15 of each even-numbered year, each agency shall submit to the Governor, in the form prescribed by him or her, a report of its proposed building renewal projects for the next biennium. Such report shall contain the information specified in section 81-177 and shall constitute a request for the allocation of funds from the Building Renewal Allocation Fund. Such report shall also constitute, as applicable, a request for the allocation of funds from the State Building Renewal Assessment Fund, University Building Renewal Assessment Fund, or State College Building Renewal Assessment Fund. The Governor shall, with the advice of the task force, allocate from such funds the sum necessary for the accomplishment of projects approved by him or her. Allocations from the Building Renewal Allocation Fund shall be made in a manner that assures accomplishment of Class I projects first, followed by accomplishment of Class II projects, and then accomplishment of Class III projects, unless doing so in a particular case would violate sound building

renewal policies and practices. The amount of such allocation shall not be transferred to the agency but shall remain within, as applicable, the Building Renewal Allocation Fund, State Building Renewal Assessment Fund, University Building Renewal Assessment Fund, or State College Building Renewal Assessment Fund subject to the control of the Governor until disbursed consistent with the provisions of the Deferred Building Renewal Act.

(2) The University of Nebraska and the state colleges may include in their reports under subsection (1) of this section their proposed building renovation projects that have received approval of the Coordinating Commission for Postsecondary Education, if required pursuant to section 85-1414, for the coming biennium as authorized by section 81-188.03 or 81-188.05, as applicable, which shall constitute requests for allocation of funds for such proposed projects from the University Building Renewal Assessment Fund or the State College Building Renewal Assessment Fund, as applicable. The Governor, with the advice of the task force, shall allocate from the University Building Renewal Assessment Fund or the State College Building Renewal Assessment Fund, as applicable, the sum necessary for the accomplishment of the renovation projects approved by him or her. Such allocations shall not be transferred to the University of Nebraska or the state college or colleges making the request but shall remain in the University Building Renewal Assessment Fund or the State College Building Renewal Assessment Fund, as applicable, subject to the control of the Governor until disbursed pursuant to the Deferred Building Renewal Act.

**Source:** Laws 1977, LB 309, § 9; Laws 1993, LB 369, § 4; Laws 1998, LB 1100, § 17; Laws 2004, LB 1092, § 1; Laws 2014, LB974, § 6. Effective date April 3, 2014.

**81-182 Governor monitor activities of task force and agencies; authorize issuance of warrants.**

The Governor, using such staff assistance as he or she may desire, shall monitor the activities of the task force and the agencies. To assure adequate accomplishment of the terms of each allocation, the Governor shall assure that expert inspection of projects is made by a competent inspector from either his or her staff, the task force, or the agency. For the purpose of making partial payments as the work progresses, the Governor may authorize the issuance of warrants from the Building Renewal Allocation Fund, State Building Renewal Assessment Fund, University Building Renewal Assessment Fund, and State College Building Renewal Assessment Fund upon certificates of the inspector in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project in a sum not exceeding ninety-five percent of the cost thereof. Upon the certificate of the inspector that the project has been completed and the terms of the allocation have been complied with, the Governor shall authorize the issuance of a warrant for the balance due the contractor.

**Source:** Laws 1977, LB 309, § 10; Laws 1998, LB 1100, § 18.

**81-183 Property not eligible for renewal and maintenance funds.**

No building held in trust, property of the Board of Educational Lands and Funds, nor highways or roads and revenue bond structures shall receive funds for renewal and maintenance under sections 81-173 to 81-190.

**Source:** Laws 1977, LB 309, § 11.

**81-184 Administration costs.**

The cost of administration of the Deferred Building Renewal Act shall be paid from the Building Renewal Allocation Fund, the State Building Renewal Assessment Fund, the University Building Renewal Assessment Fund, and the State College Building Renewal Assessment Fund in such amounts as may be appropriated by the Legislature. The Governor shall each odd-numbered year submit a specific itemized appropriation request to cover such administrative costs.

**Source:** Laws 1977, LB 309, § 12; Laws 1986, LB 258, § 31; Laws 1997, LB 314, § 9; Laws 2002, LB 1310, § 12; Laws 2003, LB 410, § 3.

**81-185 Committee on Building Maintenance; membership; purpose.**

The Executive Board of the Legislative Council shall appoint a select committee of the Legislative Council to consist of six members of the Legislature, to be known as the Committee on Building Maintenance, to exercise oversight of the deferred and preventive maintenance activities required in the Deferred Building Renewal Act. The selection of members shall be made on the basis of maintenance interest and knowledge. At least two members shall be selected from the Committee on Appropriations, one of whom shall be the chairperson of the Committee on Appropriations. On or before the sixth day of each regular legislative session, the board shall appoint or reappoint members of the committee. Such committee may utilize Legislative Council staff as required or may contract for necessary expertise. Such staff shall provide close liaison with the task force, all agencies subject to the act, and the Governor.

**Source:** Laws 1977, LB 309, § 13; Laws 1980, LB 835, § 8; Laws 1984, LB 838, § 1; Laws 1998, LB 1100, § 19.

**81-186 Committee on Building Maintenance; meetings; duties.**

The Committee on Building Maintenance shall meet as necessary, but not less than four times annually, to monitor the activities required of the task force and the agencies, boards, and commissions who are responsible for the state buildings and to review the proposed rental charges as provided in sections 81-1108.17 and 81-1108.22. The committee shall study progress and propose any necessary legislation to assure that state-owned buildings are protected through proper maintenance.

**Source:** Laws 1977, LB 309, § 14; Laws 1980, LB 835, § 9; Laws 1982, LB 604, § 4; Laws 1984, LB 838, § 2; Laws 1995, LB 530, § 3.

**81-187 Legislative Fiscal Analyst; receive copy of estimates, reports, and allocation requests.**

A copy of all estimates, reports, and allocation requests required by the Deferred Building Renewal Act shall be submitted electronically to the Legislative Fiscal Analyst upon his or her request.

**Source:** Laws 1977, LB 309, § 15; Laws 1985, LB 2, § 6; Laws 1998, LB 1129, § 18; Laws 2012, LB782, § 166.

**81-188 Energy audit report.**

A report of the findings of any energy audit conducted under the Deferred Building Renewal Act shall be sent electronically to the state agency operating

or managing the state-owned building, utility, or ground on which the audit was conducted and the Committee on Building Maintenance of the Legislature.

**Source:** Laws 2011, LB228, § 3.

**81-188.01 State Building Renewal Assessment Fund; created; use; investment.**

(1) The State Building Renewal Assessment Fund is created. The fund shall be under the control of the Governor for allocation to building renewal projects of the various agencies and shall be administered in a manner consistent with the administration of the Building Renewal Allocation Fund pursuant to the Deferred Building Renewal Act. No amounts accruing to the State Building Renewal Assessment Fund shall be expended in any manner for purposes other than as provided in this section or as appropriated by the Legislature to meet the cost of administering the act. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) Revenue credited to the State Building Renewal Assessment Fund shall include amounts derived from charges assessed pursuant to subdivision (4)(b) of section 81-1108.17 and such other revenue as may be incident to the administration of the fund.

(3) Amounts appropriated from the fund shall be expended to conduct renewal work as defined in section 81-173 and to complete other improvements incident to such renewal work as deemed necessary or appropriate by the task force. From amounts accruing to the fund as the result of depreciation charges assessed pursuant to subdivision (4)(b) of section 81-1108.17, expenditures for capital improvements shall be limited to improvements to only those facilities for which such charges have been assessed and remitted. From amounts accruing to the fund as the result of depreciation charges assessed pursuant to section 81-188.02 prior to July 1, 2011, expenditures for capital improvement projects shall be limited to exclude (a) capital improvement projects relating to facilities, structures, or buildings owned, leased, or operated by the (i) University of Nebraska, (ii) Nebraska state colleges, (iii) Department of Aeronautics, (iv) Department of Roads, (v) Game and Parks Commission, or (vi) Board of Educational Lands and Funds and (b) capital improvement projects relating to facilities, structures, or buildings for which depreciation charges are assessed pursuant to subdivision (4)(b) of section 81-1108.17.

(4) 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 1100, § 8; Laws 2000, LB 654, § 22; Laws 2002, LB 1310, § 13; Laws 2002, Second Spec. Sess., LB 1, § 6; Laws 2003, LB 410, § 4; Laws 2004, LB 439, § 15; Laws 2004, LB 1092, § 2; Laws 2009, First Spec. Sess., LB3, § 61; Laws 2011, LB380, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-188.02 Repealed. Laws 2011, LB 380, § 6.**

**81-188.03 University Building Renewal Assessment Fund; created; use; investment.**

(1) The University Building Renewal Assessment Fund is created. The fund shall be under the control of the Governor for allocation to building renewal projects and to building renovation projects of the University of Nebraska. No amounts accruing to the University Building Renewal Assessment Fund shall be transferred to any other fund and no amounts accruing to the fund shall be expended in any manner for purposes other than as provided in this section or as appropriated by the Legislature to meet the cost of administering the Deferred Building Renewal Act.

(2) Revenue credited to the fund shall include amounts as provided by the Legislature and such other revenue as may be incident to the administration of the fund.

(3) Amounts appropriated from the fund shall be expended to conduct renewal work as defined in section 81-173, to conduct renovation work, and to complete other improvements incident to such renewal or renovation work as deemed necessary or appropriate by the task force. Expenditures from the fund for capital improvements shall be limited to exclude expenditures for capital improvement projects relating to facilities, structures, or buildings from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411.

(4) 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) For purposes of this section, renovation work means work to replace the interior or exterior systems of an existing building to accommodate changes in use of building space or changes in programmatic need for building space.

**Source:** Laws 1998, LB 1100, § 10; Laws 2002, LB 1310, § 15; Laws 2003, LB 410, § 6; Laws 2004, LB 1092, § 4; Laws 2011, LB380, § 2.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-188.04 Repealed. Laws 2011, LB 380, § 6.**

**81-188.05 State College Building Renewal Assessment Fund; created; use; investment.**

(1) The State College Building Renewal Assessment Fund is created. The fund shall be under the control of the Governor for allocation to building renewal projects and building renovation projects of the Nebraska state colleges. No amounts accruing to the State College Building Renewal Assessment Fund shall be transferred to any other fund and no amounts accruing to the fund shall be expended in any manner for purposes other than as provided in this section or as appropriated by the Legislature to meet the cost of administering the Deferred Building Renewal Act.

(2) Revenue credited to the fund shall include amounts as provided by the Legislature and such other revenue as may be incident to administration of the fund.

(3) Amounts appropriated from the fund shall be expended to conduct renewal work as defined in section 81-173, to conduct renovation work, and to complete other improvements incident to such renewal or renovation work as

deemed necessary or appropriate by the task force. Expenditures from the fund for capital improvements shall be limited to exclude expenditures for capital improvement projects relating to facilities, structures, or buildings from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411.

(4) 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) For purposes of this section, renovation work means work to replace the interior or exterior systems of an existing building to accommodate changes in use of building space or changes in programmatic need for building space.

**Source:** Laws 1998, LB 1100, § 12; Laws 2002, LB 1310, § 17; Laws 2003, LB 410, § 8; Laws 2004, LB 1092, § 6; Laws 2011, LB380, § 3.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-188.06 Repealed. Laws 2011, LB 380, § 6.**

**81-189 Repealed. Laws 1984, LB 838, § 4.**

**81-190 Act, how cited.**

Sections 81-173 to 81-190 shall be known and may be cited as the Deferred Building Renewal Act.

**Source:** Laws 1977, LB 309, § 18; Laws 1998, LB 1100, § 20; Laws 1999, LB 369, § 1; Laws 2011, LB228, § 2.

**81-191 Repealed. Laws 1984, LB 838, § 4.**

**81-191.01 Repealed. Laws 2011, LB 228, § 5.**

#### (g) TERMINATION OF AGENCIES, BOARDS, AND COMMISSIONS

**81-192 Repealed. Laws 1986, LB 745, § 1.**

**81-193 Repealed. Laws 1978, LB 569, § 14.**

**81-194 Repealed. Laws 1980, LB 94, § 19.**

**81-195 Repealed. Laws 1980, LB 939, § 8.**

**81-196 Repealed. Laws 1986, LB 745, § 1.**

**81-197 Repealed. Laws 1984, LB 470, § 7.**

**81-198 Repealed. Laws 1986, LB 745, § 1.**

**81-198.01 Repealed. Laws 1986, LB 745, § 1.**

**81-198.02 Repealed. Laws 1986, LB 745, § 1.**

**81-198.03 Repealed. Laws 1986, LB 745, § 1.**

**81-198.04 Repealed. Laws 1986, LB 745, § 1.**

**81-198.05 Repealed. Laws 1986, LB 745, § 1.**

**81-198.06 Repealed. Laws 1986, LB 745, § 1.**

**81-199 Repealed. Laws 1986, LB 745, § 1.**

**81-1,100 Repealed. Laws 1986, LB 745, § 1.**

**81-1,101 Repealed. Laws 1986, LB 745, § 1.**

**81-1,102 Repealed. Laws 1986, LB 745, § 1.**

**81-1,103 Repealed. Laws 1986, LB 745, § 1.**

**81-1,104 Repealed. Laws 1986, LB 745, § 1.**

**81-1,105 Repealed. Laws 1986, LB 745, § 1.**

**81-1,106 Repealed. Laws 1986, LB 745, § 1.**

**81-1,107 Repealed. Laws 1986, LB 745, § 1.**

**81-1,108 Repealed. Laws 1986, LB 745, § 1.**

## ARTICLE 2

### DEPARTMENT OF AGRICULTURE

#### Cross References

**Department of Agriculture, powers and duties with respect to:**

Agriculture, generally, see Chapter 2.

Livestock, generally, see Chapter 54.

Weights and measures, generally, see Chapter 89.

**License Suspension Act**, see section 43-3301.

#### (a) GENERAL POWERS

##### Section

- |            |  |
|------------|--|
| 81-201.    | Department of Agriculture; general powers.   |
| 81-201.01. | Repealed. Laws 1991, LB 358, § 62.   |
| 81-201.02. | Repealed. Laws 1991, LB 358, § 62.   |
| 81-201.03. | Office services; authorized; powers.   |
| 81-201.04. | Office services; billings and charges; Management Services Expense Revolving Fund; created; receipts; disbursements; investment. |
| 81-201.05. | Weed Book Cash Fund; created; use; investment.   |
| 81-202.    | Department of Agriculture; Bureau of Animal Industry; State Veterinarian; exercise of powers.                                    |
| 81-202.01. | State Veterinarian; office created; appointment; salary; qualifications.   |
| 81-202.02. | State Veterinarian; rules and regulations; adoption.   |

#### (b) FOOD CODES

- |         |                                    |
|---------|------------------------------------|
| 81-203. | Repealed. Laws 1965, c. 546, § 18. |
| 81-204. | Repealed. Laws 1965, c. 546, § 18. |
| 81-205. | Repealed. Laws 1965, c. 546, § 18. |
| 81-206. | Repealed. Laws 1965, c. 546, § 18. |
| 81-207. | Repealed. Laws 1965, c. 546, § 18. |
| 81-208. | Repealed. Laws 1965, c. 546, § 18. |
| 81-209. | Repealed. Laws 1965, c. 546, § 18. |
| 81-210. | Repealed. Laws 1965, c. 546, § 18. |
| 81-211. | Repealed. Laws 1965, c. 546, § 18. |
| 81-212. | Repealed. Laws 1965, c. 546, § 18. |
| 81-213. | Repealed. Laws 1965, c. 546, § 18. |
| 81-214. | Repealed. Laws 1965, c. 546, § 18. |
| 81-215. | Repealed. Laws 1965, c. 546, § 18. |

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

81-216.	Repealed. Laws 1965, c. 546, § 18.
81-216.01.	Transferred to section 81-2,239.
81-216.02.	Transferred to section 81-2,240.
81-216.03.	Transferred to section 81-2,248.
81-216.04.	Transferred to section 81-2,253.
81-216.05.	Transferred to section 81-2,247.
81-216.06.	Transferred to section 81-2,250.
81-216.07.	Transferred to section 81-2,246.
81-216.08.	Transferred to section 81-2,243.
81-216.09.	Transferred to section 81-2,244.
81-216.10.	Transferred to section 81-2,251.
81-216.11.	Transferred to section 81-2,241.
81-216.12.	Transferred to section 81-2,252.
81-216.13.	Transferred to section 81-2,249.
81-216.14.	Repealed. Laws 1991, LB 358, § 62.
81-216.15.	Transferred to section 81-2,259.
81-216.16.	Transferred to section 81-2,261.
81-216.17.	Transferred to section 81-2,258.
81-216.18.	Transferred to section 81-2,260.
81-216.19.	Transferred to section 81-2,257.
81-216.20.	Transferred to section 81-2,262.
81-216.21.	Transferred to section 81-2,270.
81-216.22.	Transferred to section 81-2,276.
81-216.23.	Transferred to section 81-2,277.
81-216.24.	Transferred to section 81-2,278.
81-216.25.	Transferred to section 81-2,279.
81-216.26.	Transferred to section 81-2,280.
81-216.27.	Transferred to section 81-2,281.
81-216.28.	Transferred to section 81-2,282.
81-216.29.	Transferred to section 81-2,283.
81-216.30.	Transferred to section 81-2,284.
81-216.31.	Transferred to section 81-2,285.
81-216.32.	Transferred to section 81-2,286.
81-216.33.	Transferred to section 81-2,287.
81-216.34.	Transferred to section 81-2,288.
81-216.35.	Transferred to section 81-2,289.
81-216.36.	Transferred to section 81-2,290.
81-216.37.	Transferred to section 81-2,291.
81-216.38.	Transferred to section 81-2,292.
81-216.39.	Transferred to section 81-2,242.
81-217.	Repealed. Laws 1981, LB 487, § 62.
81-217.01.	Repealed. Laws 1981, LB 487, § 62.
81-217.02.	Repealed. Laws 1981, LB 487, § 62.
81-217.03.	Repealed. Laws 1981, LB 487, § 62.
81-217.04.	Repealed. Laws 1981, LB 487, § 62.
81-217.05.	Repealed. Laws 1981, LB 487, § 62.
81-217.06.	Repealed. Laws 1981, LB 487, § 62.
81-217.07.	Repealed. Laws 1981, LB 487, § 62.
81-217.08.	Repealed. Laws 1981, LB 487, § 62.
81-217.09.	Repealed. Laws 1981, LB 487, § 62.
81-217.10.	Repealed. Laws 1981, LB 487, § 62.
81-217.11.	Repealed. Laws 1981, LB 487, § 62.
81-217.12.	Repealed. Laws 1981, LB 487, § 62.
81-217.13.	Repealed. Laws 1981, LB 487, § 62.
81-217.14.	Repealed. Laws 1981, LB 487, § 62.
81-217.15.	Repealed. Laws 1981, LB 487, § 62.
81-217.16.	Repealed. Laws 1981, LB 487, § 62.
81-217.17.	Repealed. Laws 1981, LB 487, § 62.
81-217.18.	Repealed. Laws 1981, LB 487, § 62.
81-217.19.	Repealed. Laws 1981, LB 487, § 62.
81-217.20.	Repealed. Laws 1981, LB 487, § 62.

## DEPARTMENT OF AGRICULTURE

### Section

- 81-217.21. Repealed. Laws 1981, LB 487, § 62.
- 81-217.22. Repealed. Laws 1981, LB 487, § 62.
- 81-217.23. Repealed. Laws 1981, LB 487, § 62.
- 81-217.24. Repealed. Laws 1981, LB 487, § 62.
- 81-217.25. Repealed. Laws 1981, LB 487, § 62.
- 81-217.26. Repealed. Laws 1981, LB 487, § 62.
- 81-217.27. Repealed. Laws 1981, LB 487, § 62.
- 81-217.28. Repealed. Laws 1981, LB 487, § 62.
- 81-217.29. Transferred to section 25-21,189.
- 81-217.30. Repealed. Laws 1987, LB 201, § 7.
- 81-217.31. Transferred to section 28-1483.
- 81-217.32. Repealed. Laws 1987, LB 201, § 7.

### (c) FROZEN DESSERTS

- 81-218. Repealed. Laws 1980, LB 632, § 47.
- 81-218.01. Repealed. Laws 1980, LB 632, § 47.
- 81-218.02. Repealed. Laws 1980, LB 632, § 47.
- 81-218.03. Repealed. Laws 1980, LB 632, § 47.
- 81-218.04. Repealed. Laws 1980, LB 632, § 47.
- 81-218.05. Repealed. Laws 1980, LB 632, § 47.
- 81-218.06. Repealed. Laws 1980, LB 632, § 47.
- 81-218.07. Repealed. Laws 1980, LB 632, § 47.
- 81-218.08. Repealed. Laws 1980, LB 632, § 47.
- 81-218.09. Repealed. Laws 1980, LB 632, § 47.
- 81-218.10. Repealed. Laws 1980, LB 632, § 47.
- 81-218.11. Repealed. Laws 1980, LB 632, § 47.
- 81-219. Repealed. Laws 1980, LB 632, § 47.
- 81-220. Repealed. Laws 1980, LB 632, § 47.
- 81-221. Repealed. Laws 1980, LB 632, § 47.
- 81-222. Repealed. Laws 1980, LB 632, § 47.
- 81-223. Repealed. Laws 1980, LB 632, § 47.
- 81-224. Repealed. Laws 1980, LB 632, § 47.
- 81-225. Repealed. Laws 1980, LB 632, § 47.
- 81-226. Repealed. Laws 1980, LB 632, § 47.
- 81-227. Repealed. Laws 1980, LB 632, § 47.
- 81-228. Repealed. Laws 1980, LB 632, § 47.

### (d) CONTROL OF DAIRY INDUSTRY

- 81-229. Repealed. Laws 1996, LB 966, § 4.
- 81-230. Repealed. Laws 1980, LB 632, § 47.
- 81-230.01. Repealed. Laws 1980, LB 632, § 47.
- 81-231. Repealed. Laws 1980, LB 632, § 47.
- 81-232. Repealed. Laws 1980, LB 632, § 47.
- 81-233. Repealed. Laws 1980, LB 632, § 47.
- 81-234. Repealed. Laws 1980, LB 632, § 47.
- 81-235. Repealed. Laws 1980, LB 632, § 47.
- 81-236. Repealed. Laws 1980, LB 632, § 47.
- 81-237. Repealed. Laws 1980, LB 632, § 47.
- 81-238. Repealed. Laws 1980, LB 632, § 47.
- 81-239. Repealed. Laws 1980, LB 632, § 47.
- 81-240. Repealed. Laws 1980, LB 632, § 47.
- 81-241. Repealed. Laws 1980, LB 632, § 47.
- 81-242. Repealed. Laws 1980, LB 632, § 47.
- 81-243. Repealed. Laws 1980, LB 632, § 47.
- 81-244. Repealed. Laws 1980, LB 632, § 47.
- 81-245. Repealed. Laws 1980, LB 632, § 47.
- 81-246. Repealed. Laws 1980, LB 632, § 47.
- 81-247. Repealed. Laws 1980, LB 632, § 47.
- 81-248. Repealed. Laws 1980, LB 632, § 47.
- 81-249. Repealed. Laws 1980, LB 632, § 47.
- 81-250. Repealed. Laws 1980, LB 632, § 47.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

81-251.	Repealed. Laws 1980, LB 632, § 47.
81-252.	Repealed. Laws 1980, LB 632, § 47.
81-253.	Repealed. Laws 1980, LB 632, § 47.
81-254.	Repealed. Laws 1980, LB 632, § 47.
81-255.	Repealed. Laws 1980, LB 632, § 47.
81-256.	Repealed. Laws 1980, LB 632, § 47.
81-257.	Repealed. Laws 1980, LB 632, § 47.
81-258.	Repealed. Laws 1986, LB 900, § 38.
81-259.	Repealed. Laws 1986, LB 900, § 38.
81-260.	Repealed. Laws 1986, LB 900, § 38.
81-261.	Repealed. Laws 1986, LB 900, § 38.
81-262.	Repealed. Laws 1996, LB 966, § 4.
81-263.	Repealed. Laws 1986, LB 900, § 38.
81-263.01.	Repealed. Laws 1961, c. 285, § 1.
81-263.02.	Repealed. Laws 1961, c. 285, § 1.
81-263.03.	Repealed. Laws 1961, c. 285, § 1.
81-263.04.	Repealed. Laws 1961, c. 285, § 1.
81-263.05.	Repealed. Laws 1961, c. 285, § 1.
81-263.06.	Repealed. Laws 1961, c. 285, § 1.
81-263.07.	Repealed. Laws 1961, c. 285, § 1.
81-263.08.	Repealed. Laws 1961, c. 285, § 1.
81-263.09.	Repealed. Laws 1961, c. 285, § 1.
81-263.10.	Repealed. Laws 1961, c. 285, § 1.
81-263.11.	Repealed. Laws 1967, c. 580, § 33.
81-263.12.	Repealed. Laws 1967, c. 580, § 33.
81-263.13.	Repealed. Laws 1967, c. 580, § 33.
81-263.14.	Repealed. Laws 1967, c. 580, § 33.
81-263.15.	Repealed. Laws 1967, c. 580, § 33.
81-263.16.	Repealed. Laws 1967, c. 580, § 33.
81-263.17.	Repealed. Laws 1967, c. 580, § 33.
81-263.18.	Repealed. Laws 1967, c. 580, § 33.
81-263.19.	Repealed. Laws 1967, c. 580, § 33.
81-263.20.	Repealed. Laws 1967, c. 580, § 33.
81-263.21.	Repealed. Laws 1967, c. 580, § 33.
81-263.22.	Repealed. Laws 1967, c. 580, § 33.
81-263.23.	Repealed. Laws 1967, c. 580, § 33.
81-263.24.	Repealed. Laws 1967, c. 580, § 33.
81-263.25.	Repealed. Laws 1967, c. 580, § 33.
81-263.26.	Repealed. Laws 1967, c. 580, § 33.
81-263.27.	Repealed. Laws 1967, c. 580, § 33.
81-263.28.	Repealed. Laws 1967, c. 580, § 33.
81-263.29.	Repealed. Laws 1967, c. 580, § 33.
81-263.30.	Repealed. Laws 1967, c. 580, § 33.
81-263.31.	Repealed. Laws 1967, c. 580, § 33.
81-263.32.	Repealed. Laws 1967, c. 580, § 33.
81-263.33.	Repealed. Laws 1967, c. 580, § 33.
81-263.34.	Repealed. Laws 1967, c. 580, § 33.
81-263.35.	Repealed. Laws 1967, c. 580, § 33.
81-263.36.	Repealed. Laws 1967, c. 580, § 33.
81-263.37.	Repealed. Laws 1975, LB 324, § 1.
81-263.38.	Repealed. Laws 1975, LB 324, § 1.
81-263.39.	Repealed. Laws 1975, LB 324, § 1.
81-263.40.	Repealed. Laws 1975, LB 324, § 1.
81-263.41.	Repealed. Laws 1975, LB 324, § 1.
81-263.42.	Repealed. Laws 1975, LB 324, § 1.
81-263.43.	Repealed. Laws 1975, LB 324, § 1.
81-263.44.	Repealed. Laws 1975, LB 324, § 1.
81-263.45.	Repealed. Laws 1975, LB 324, § 1.
81-263.46.	Repealed. Laws 1975, LB 324, § 1.
81-263.47.	Repealed. Laws 1975, LB 324, § 1.
81-263.48.	Repealed. Laws 1975, LB 324, § 1.

## DEPARTMENT OF AGRICULTURE

### Section

- 81-263.49. Repealed. Laws 1975, LB 324, § 1.
- 81-263.50. Repealed. Laws 1980, LB 632, § 47.
- 81-263.51. Repealed. Laws 1980, LB 632, § 47.
- 81-263.52. Repealed. Laws 1980, LB 632, § 47.
- 81-263.53. Repealed. Laws 1980, LB 632, § 47.
- 81-263.54. Repealed. Laws 1980, LB 632, § 47.
- 81-263.55. Repealed. Laws 1980, LB 632, § 47.
- 81-263.56. Repealed. Laws 1980, LB 632, § 47.
- 81-263.57. Repealed. Laws 1980, LB 632, § 47.
- 81-263.58. Repealed. Laws 1980, LB 632, § 47.
- 81-263.59. Repealed. Laws 1980, LB 632, § 47.
- 81-263.60. Repealed. Laws 1980, LB 632, § 47.
- 81-263.61. Repealed. Laws 1980, LB 632, § 47.
- 81-263.62. Repealed. Laws 1980, LB 632, § 47.
- 81-263.63. Repealed. Laws 1980, LB 632, § 47.
- 81-263.64. Repealed. Laws 1980, LB 632, § 47.
- 81-263.65. Repealed. Laws 1980, LB 632, § 47.
- 81-263.66. Repealed. Laws 1980, LB 632, § 47.
- 81-263.67. Repealed. Laws 1980, LB 632, § 47.
- 81-263.68. Repealed. Laws 1980, LB 632, § 47.
- 81-263.69. Repealed. Laws 1980, LB 632, § 47.
- 81-263.70. Repealed. Laws 1980, LB 632, § 47.
- 81-263.71. Repealed. Laws 1980, LB 632, § 47.
- 81-263.72. Repealed. Laws 1980, LB 632, § 47.
- 81-263.73. Repealed. Laws 1980, LB 632, § 47.
- 81-263.74. Repealed. Laws 1980, LB 632, § 47.
- 81-263.75. Repealed. Laws 1980, LB 632, § 47.
- 81-263.76. Repealed. Laws 1980, LB 632, § 47.
- 81-263.77. Repealed. Laws 1980, LB 632, § 47.
- 81-263.78. Repealed. Laws 1980, LB 632, § 47.
- 81-263.79. Repealed. Laws 1980, LB 632, § 47.
- 81-263.80. Repealed. Laws 1980, LB 632, § 47.
- 81-263.81. Repealed. Laws 1975, LB 324, § 1.
- 81-263.82. Repealed. Laws 1975, LB 324, § 1.
- 81-263.83. Repealed. Laws 1975, LB 324, § 1.
- 81-263.84. Repealed. Laws 1975, LB 324, § 1.
- 81-263.85. Repealed. Laws 1975, LB 324, § 1.
- 81-263.86. Repealed. Laws 1975, LB 324, § 1.
- 81-263.87. Repealed. Laws 1980, LB 632, § 47.
- 81-263.88. Transferred to section 2-3913.
- 81-263.89. Transferred to section 2-3914.
- 81-263.90. Transferred to section 2-3915.
- 81-263.91. Transferred to section 2-3916.
- 81-263.92. Repealed. Laws 1980, LB 632, § 47.
- 81-263.93. Repealed. Laws 1980, LB 632, § 47.
- 81-263.94. Transferred to section 2-3918.
- 81-263.95. Transferred to section 2-3919.
- 81-263.96. Transferred to section 2-3920.
- 81-263.97. Transferred to section 2-3921.
- 81-263.98. Transferred to section 2-3922.
- 81-263.99. Transferred to section 2-3923.
- 81-263.100. Transferred to section 2-3924.
- 81-263.101. Transferred to section 2-3925.
- 81-263.102. Repealed. Laws 1980, LB 632, § 47.
- 81-263.103. Repealed. Laws 1980, LB 632, § 47.
- 81-263.104. Repealed. Laws 1980, LB 632, § 47.
- 81-263.105. Repealed. Laws 1980, LB 632, § 47.
- 81-263.106. Transferred to section 2-3931.
- 81-263.107. Transferred to section 2-3932.
- 81-263.108. Transferred to section 2-3933.
- 81-263.109. Transferred to section 2-3934.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-263.110. Transferred to section 2-3935.
- 81-263.111. Transferred to section 2-3936.
- 81-263.112. Repealed. Laws 1980, LB 632, § 47.
- 81-263.113. Repealed. Laws 1980, LB 632, § 47.
- 81-263.114. Transferred to section 2-3937.
- 81-263.115. Repealed. Laws 1980, LB 632, § 47.
- 81-263.116. Transferred to section 2-3938.
- 81-263.117. Transferred to section 2-3947.
- 81-263.118. Transferred to section 2-3939.
- 81-263.119. Transferred to section 2-3942.
- 81-263.120. Transferred to section 2-3943.
- 81-263.121. Transferred to section 2-3944.
- 81-263.122. Transferred to section 2-3945.
- 81-263.123. Repealed. Laws 1980, LB 632, § 47.

### (e) CONDENSED MILK

- 81-264. Repealed. Laws 1980, LB 632, § 47.
- 81-265. Repealed. Laws 1980, LB 632, § 47.
- 81-266. Repealed. Laws 1980, LB 632, § 47.
- 81-267. Repealed. Laws 1980, LB 632, § 47.

### (f) EGGS

- 81-268. Repealed. Laws 1955, c. 332, § 15.
- 81-269. Repealed. Laws 1955, c. 332, § 15.
- 81-270. Repealed. Laws 1955, c. 332, § 15.
- 81-271. Repealed. Laws 1955, c. 332, § 15.
- 81-272. Repealed. Laws 1955, c. 332, § 15.
- 81-273. Repealed. Laws 1955, c. 332, § 15.
- 81-274. Repealed. Laws 1949, c. 279, § 6.
- 81-275. Repealed. Laws 1955, c. 332, § 15.
- 81-275.01. Repealed. Laws 1961, c. 424, § 20.
- 81-275.02. Repealed. Laws 1961, c. 424, § 20.
- 81-275.03. Repealed. Laws 1961, c. 424, § 20.
- 81-275.04. Repealed. Laws 1961, c. 424, § 20.
- 81-275.05. Repealed. Laws 1961, c. 424, § 20.
- 81-275.06. Repealed. Laws 1961, c. 424, § 20.
- 81-275.07. Repealed. Laws 1961, c. 424, § 20.
- 81-275.08. Repealed. Laws 1961, c. 424, § 20.
- 81-275.09. Repealed. Laws 1961, c. 424, § 20.
- 81-275.10. Repealed. Laws 1961, c. 424, § 20.
- 81-275.11. Repealed. Laws 1961, c. 424, § 20.
- 81-275.12. Repealed. Laws 1961, c. 424, § 20.
- 81-275.13. Repealed. Laws 1961, c. 424, § 20.
- 81-275.14. Repealed. Laws 1961, c. 424, § 20.
- 81-275.15. Repealed. Laws 1977, LB 268, § 27.
- 81-275.16. Repealed. Laws 1977, LB 268, § 27.
- 81-275.17. Repealed. Laws 1977, LB 268, § 27.
- 81-275.18. Repealed. Laws 1977, LB 268, § 27.
- 81-275.19. Repealed. Laws 1977, LB 268, § 27.
- 81-275.20. Repealed. Laws 1977, LB 268, § 27.
- 81-275.21. Repealed. Laws 1977, LB 268, § 27.
- 81-275.22. Repealed. Laws 1977, LB 268, § 27.
- 81-275.23. Repealed. Laws 1977, LB 268, § 27.
- 81-275.24. Repealed. Laws 1977, LB 268, § 27.
- 81-275.25. Repealed. Laws 1977, LB 268, § 27.
- 81-275.26. Repealed. Laws 1977, LB 268, § 27.
- 81-275.27. Repealed. Laws 1977, LB 268, § 27.
- 81-275.28. Repealed. Laws 1977, LB 268, § 27.
- 81-275.29. Repealed. Laws 1977, LB 268, § 27.
- 81-275.30. Repealed. Laws 1977, LB 268, § 27.
- 81-275.31. Repealed. Laws 1977, LB 268, § 27.

## DEPARTMENT OF AGRICULTURE

### Section

- 81-275.32. Repealed. Laws 1977, LB 268, § 27.
- 81-275.33. Repealed. Laws 1977, LB 268, § 27.
- 81-275.34. Repealed. Laws 1977, LB 268, § 27.
- 81-275.35. Repealed. Laws 1977, LB 268, § 27.

### (g) PRODUCE COMMISSION MERCHANTS

- 81-276. Repealed. Laws 1980, LB 633, § 10.
- 81-277. Repealed. Laws 1980, LB 633, § 10.
- 81-278. Repealed. Laws 1980, LB 633, § 10.
- 81-279. Repealed. Laws 1980, LB 633, § 10.
- 81-280. Repealed. Laws 1980, LB 633, § 10.

### (h) CIDER AND VINEGAR

- 81-281. Repealed. Laws 1965, c. 546, § 18.
- 81-282. Repealed. Laws 1965, c. 546, § 18.
- 81-283. Repealed. Laws 1965, c. 546, § 18.
- 81-284. Repealed. Laws 1965, c. 546, § 18.
- 81-285. Repealed. Laws 1965, c. 546, § 18.
- 81-286. Repealed. Laws 1965, c. 546, § 18.

### (i) OLEOMARGARINE AND BUTTERINE

- 81-287. Repealed. Laws 1980, LB 632, § 47.
- 81-288. Repealed. Laws 1980, LB 632, § 47.
- 81-289. Repealed. Laws 1980, LB 632, § 47.
- 81-290. Repealed. Laws 1980, LB 632, § 47.
- 81-291. Repealed. Laws 1980, LB 632, § 47.
- 81-292. Repealed. Laws 1980, LB 632, § 47.
- 81-293. Repealed. Laws 1980, LB 632, § 47.
- 81-294. Repealed. Laws 1972, LB 1410, § 3.
- 81-295. Repealed. Laws 1972, LB 1410, § 3.
- 81-296. Repealed. Laws 1972, LB 1410, § 3.
- 81-297. Repealed. Laws 1972, LB 1410, § 3.
- 81-298. Repealed. Laws 1972, LB 1410, § 3.
- 81-299. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,100. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,101. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,102. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,103. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,104. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,105. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,106. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,107. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,108. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,109. Repealed. Laws 1972, LB 1410, § 3.
- 81-2,110. Repealed. Laws 1972, LB 1410, § 3.

### (j) FOOD; PREMISES USED FOR MANUFACTURE OR PREPARATION; SANITATION

- 81-2,111. Repealed. Laws 1981, LB 487, § 62.
- 81-2,111.01. Repealed. Laws 1981, LB 487, § 62.
- 81-2,112. Repealed. Laws 1981, LB 487, § 62.
- 81-2,113. Repealed. Laws 1981, LB 487, § 62.
- 81-2,114. Repealed. Laws 1981, LB 487, § 62.
- 81-2,115. Repealed. Laws 1981, LB 487, § 62.
- 81-2,116. Repealed. Laws 1981, LB 487, § 62.
- 81-2,117. Repealed. Laws 1981, LB 487, § 62.
- 81-2,118. Repealed. Laws 1981, LB 487, § 62.
- 81-2,119. Repealed. Laws 1981, LB 487, § 62.
- 81-2,120. Repealed. Laws 1981, LB 487, § 62.
- 81-2,121. Repealed. Laws 1981, LB 487, § 62.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

#### (k) COLD STORAGE WAREHOUSES

- 81-2,122. Repealed. Laws 1981, LB 487, § 62.
- 81-2,123. Repealed. Laws 1981, LB 487, § 62.
- 81-2,124. Repealed. Laws 1981, LB 487, § 62.
- 81-2,125. Repealed. Laws 1947, c. 319, § 3.
- 81-2,126. Repealed. Laws 1947, c. 319, § 3.
- 81-2,127. Repealed. Laws 1981, LB 487, § 62.
- 81-2,128. Repealed. Laws 1947, c. 319, § 3.
- 81-2,129. Repealed. Laws 1981, LB 487, § 62.
- 81-2,130. Repealed. Laws 1947, c. 319, § 3.
- 81-2,131. Repealed. Laws 1947, c. 319, § 3.
- 81-2,132. Repealed. Laws 1981, LB 487, § 62.
- 81-2,133. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134. Repealed. Laws 1981, LB 487, § 62.

#### (l) FROZEN FOOD LOCKER PLANTS

- 81-2,134.01. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.02. Repealed. Laws 1957, c. 371, § 6.
- 81-2,134.03. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.04. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.05. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.06. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.07. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.08. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.09. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.10. Repealed. Laws 1981, LB 487, § 62.
- 81-2,134.11. Repealed. Laws 1981, LB 487, § 62.

#### (m) SEEDS

- 81-2,135. Repealed. Laws 1945, c. 237, § 14.
- 81-2,135.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,136. Repealed. Laws 1945, c. 237, § 14.
- 81-2,136.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,136.02. Repealed. Laws 1969, c. 759, § 11.
- 81-2,137. Repealed. Laws 1945, c. 237, § 14.
- 81-2,137.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,138. Repealed. Laws 1945, c. 237, § 14.
- 81-2,138.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,139. Repealed. Laws 1945, c. 237, § 14.
- 81-2,139.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,140. Repealed. Laws 1945, c. 237, § 14.
- 81-2,140.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,141. Repealed. Laws 1945, c. 237, § 14.
- 81-2,141.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,141.02. Repealed. Laws 1969, c. 759, § 11.
- 81-2,141.03. Repealed. Laws 1969, c. 759, § 11.
- 81-2,142. Repealed. Laws 1945, c. 237, § 14.
- 81-2,142.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,143. Repealed. Laws 1945, c. 237, § 14.
- 81-2,143.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,144. Repealed. Laws 1945, c. 237, § 14.
- 81-2,144.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,145. Repealed. Laws 1945, c. 237, § 14.
- 81-2,145.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,146. Repealed. Laws 1945, c. 237, § 14.
- 81-2,146.01. Repealed. Laws 1969, c. 759, § 11.
- 81-2,147. Law, how cited.
- 81-2,147.01. Terms, defined.
- 81-2,147.02. Container; labeling requirements.
- 81-2,147.03. Sale; unlawful acts.
- 81-2,147.04. Records; samples; subject to inspection.

## DEPARTMENT OF AGRICULTURE

### Section

- 81-2,147.05. Exempt seed or grain.
- 81-2,147.06. Director; powers and duties.
- 81-2,147.07. Seeds not in compliance with law; remedies; procedure.
- 81-2,147.08. Restraining order or injunction; application by director; issued without bond.
- 81-2,147.09. Violations; penalty; hearing; enforcement.
- 81-2,147.10. Sale of labeled seeds; permit required; fees; renewal; exceptions; refusal or cancellation of permit; hearing.
- 81-2,147.11. Nebraska Seed Administrative Cash Fund; created; use; investment.
- 81-2,147.12. Preemption of local law.
- 81-2,148. Repealed. Laws 1945, c. 237, § 14.
- 81-2,149. State-certified seeds; plant parts; approval of standards; certification, defined.
- 81-2,150. State-certified seeds; dealers; observance of rules of University of Nebraska Institute of Agriculture and Natural Resources required.
- 81-2,151. State-certified seeds; certification agencies; nonprofit basis.
- 81-2,152. State-certified seeds; certification agencies; legal obligations; University of Nebraska Institute of Agriculture and Natural Resources not liable.
- 81-2,153. State-certified seeds; growers; violations; dishonest practices; certification may be withheld.
- 81-2,154. State-certified seeds; violations; penalty.
- 81-2,155. Hybrid seed corn, defined; sale; practices forbidden.
- 81-2,156. Hybrid seed corn; cross, defined.
- 81-2,157. Hybrid seed corn; violations; penalty.

### (n) COMMERCIAL FERTILIZER AND SOIL CONDITIONER

- 81-2,158. Repealed. Laws 1955, c. 334, § 23.
- 81-2,159. Repealed. Laws 1955, c. 334, § 23.
- 81-2,160. Repealed. Laws 1955, c. 334, § 23.
- 81-2,161. Repealed. Laws 1955, c. 334, § 23.
- 81-2,161.01. Repealed. Laws 1955, c. 334, § 23.
- 81-2,161.02. Repealed. Laws 1955, c. 334, § 23.
- 81-2,162. Repealed. Laws 1955, c. 334, § 23.
- 81-2,162.01. Act; administration.
- 81-2,162.02. Terms, defined.
- 81-2,162.03. Soil conditioner; registration; expiration; application; contents; custom-blended products exempt; information required.
- 81-2,162.04. Soil conditioner; label; contents; bulk; statement; common name; pesticide; how labeled.
- 81-2,162.05. Commercial fertilizer; label affixed to package; contents; common name; custom-blended products; requirements.
- 81-2,162.06. Commercial fertilizer and soil conditioner; inspection fee; amount; tonnage report; penalty; confidential information.
- 81-2,162.07. Enforcement of act; inspections; testing; methods of analysis; results; distribution.
- 81-2,162.08. Commercial fertilizer; superphosphate; requirements.
- 81-2,162.09. Repealed. Laws 1975, LB 333, § 25.
- 81-2,162.10. Repealed. Laws 1975, LB 333, § 25.
- 81-2,162.11. Commercial fertilizer and soil conditioner; sales information; director publish; contents.
- 81-2,162.12. Commercial fertilizers and soil conditioners; rules and regulations.
- 81-2,162.13. Commercial fertilizer or soil conditioner; registration or license; cancellation; reasons; hearing.
- 81-2,162.14. Commercial fertilizer or soil conditioner; stop-sale, stop-use, or removal order; effect; release, when.
- 81-2,162.15. Commercial fertilizer or soil conditioner; noncompliance; condemnation; court order; opportunity to comply.
- 81-2,162.16. Commercial fertilizer or soil conditioner; rules and regulations; violation; notice; hearing; certification to county attorney or Attorney General.
- 81-2,162.17. Commercial fertilizer or soil conditioner; act; violations; penalty.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-2,162.18. Commercial fertilizer or soil conditioner; unlawful practices; director; waiver, when.
- 81-2,162.19. Commercial fertilizer or soil conditioner; Attorney General; county attorney; duties.
- 81-2,162.20. Commercial fertilizer or soil conditioner; injunction; director; application; no bond required.
- 81-2,162.21. Commercial fertilizer or soil conditioner; sales or exchanges; restriction or avoidance; exception.
- 81-2,162.22. Act, how cited.
- 81-2,162.23. Manufacture or distribution of commercial fertilizers or soil conditioners; license required; exception; application; fee; posting of license; records; contents.
- 81-2,162.24. Repealed. Laws 1980, LB 889, § 9.
- 81-2,162.25. Misbranded commercial fertilizer or soil conditioner; distribution unlawful; how determined.
- 81-2,162.26. Adulterated commercial fertilizer or soil conditioner; distribution unlawful; how determined.
- 81-2,162.27. Fertilizers and Soil Conditioners Administrative Fund; created; use; investment.
- 81-2,162.28. Preemption of local law.

### (o) PUBLICITY

- 81-2,163. State resources and industries; department; publications.
- 81-2,164. Tenants; information and statistics; publication.
- 81-2,164.01. Agricultural products; Department of Agriculture; cooperate with federal government; information and statistics; publication.
- 81-2,164.02. Agricultural products; department and director; powers and duties; designation of bureau.
- 81-2,164.03. Agricultural Products Marketing Information Cash Fund; created; use; investment.

### (p) BEEKEEPING

- 81-2,165. Beekeeping; inspections; rules and regulations; duties of department and director.
- 81-2,165.01. Act, how cited.
- 81-2,165.02. Beekeeping; legislative intent; responsibility for education.
- 81-2,166. Terms, defined.
- 81-2,167. Beekeeping; department; inspection; purpose; violations.
- 81-2,168. Beekeeping; inspection; notice to owner; University of Nebraska; duties.
- 81-2,169. Beekeeping; infected bees or apiaries; nuisance; destruction.
- 81-2,170. Beekeeping; contagion or infection; duty of owner to report to department; quarantine; when; notice; effect.
- 81-2,171. Beekeeping; abandoned apiary; seized by department; notice.
- 81-2,171.01. Repealed. Laws 1976, LB 722, § 4.
- 81-2,172. Repealed. Laws 2004, LB 835, § 9.
- 81-2,173. Beekeeping; inspection certificate; procedure.
- 81-2,174. Beekeeping; inspection certificate; fees; State Apiary Cash Fund; created; use; investment.
- 81-2,175. Repealed. Laws 1986, LB 1001, § 13.
- 81-2,176. Beekeeping; inspection certificate; unlawful use; penalty.
- 81-2,177. Repealed. Laws 1979, LB 548, § 4.
- 81-2,177.01. Repealed. Laws 2004, LB 835, § 9.
- 81-2,178. Repealed. Laws 1967, c. 583, § 7.
- 81-2,179. Beekeeping; director; enforcement powers; county attorney or Attorney General; duties; violations; penalty.
- 81-2,180. Beekeeping; liability of beekeeper for acts of agent.
- 81-2,181. Honey; Department of Agriculture; adopt standard; label restrictions; violation; remedy or penalty.

### (q) SOFT DRINKS

- 81-2,182. Repealed. Laws 1981, LB 487, § 62.

## DEPARTMENT OF AGRICULTURE

### Section

- 81-2,183. Repealed. Laws 1981, LB 487, § 62.
- 81-2,184. Repealed. Laws 1981, LB 487, § 62.
- 81-2,185. Repealed. Laws 1981, LB 487, § 62.

### (r) ANTIFREEZE

- 81-2,186. Repealed. Laws 1981, LB 497, § 1.
- 81-2,187. Repealed. Laws 1981, LB 497, § 1.
- 81-2,188. Repealed. Laws 1981, LB 497, § 1.
- 81-2,189. Repealed. Laws 1981, LB 497, § 1.
- 81-2,190. Repealed. Laws 1981, LB 497, § 1.
- 81-2,191. Repealed. Laws 1981, LB 497, § 1.
- 81-2,192. Repealed. Laws 1981, LB 497, § 1.
- 81-2,193. Repealed. Laws 1981, LB 497, § 1.
- 81-2,194. Repealed. Laws 1981, LB 497, § 1.
- 81-2,195. Repealed. Laws 1981, LB 497, § 1.
- 81-2,196. Repealed. Laws 1981, LB 497, § 1.
- 81-2,197. Repealed. Laws 1981, LB 497, § 1.

### (s) MOBILE HOME COURTS

- 81-2,198. Repealed. Laws 1959, c. 303, § 11.
- 81-2,199. Repealed. Laws 1959, c. 303, § 11.
- 81-2,200. Repealed. Laws 1959, c. 303, § 11.
- 81-2,201. Repealed. Laws 1959, c. 303, § 11.
- 81-2,202. Repealed. Laws 1959, c. 303, § 11.
- 81-2,203. Repealed. Laws 1959, c. 303, § 11.
- 81-2,204. Repealed. Laws 1959, c. 303, § 11.
- 81-2,205. Repealed. Laws 1959, c. 303, § 11.
- 81-2,206. Repealed. Laws 1959, c. 303, § 11.
- 81-2,207. Repealed. Laws 1959, c. 303, § 11.
- 81-2,208. Repealed. Laws 1959, c. 303, § 11.
- 81-2,209. Repealed. Laws 1959, c. 303, § 11.
- 81-2,210. Repealed. Laws 1959, c. 303, § 11.

### (t) MEATS

- 81-2,211. Repealed. Laws 1969, c. 793, § 1.
- 81-2,212. Repealed. Laws 1969, c. 793, § 1.
- 81-2,213. Repealed. Laws 1969, c. 793, § 1.
- 81-2,214. Repealed. Laws 1969, c. 793, § 1.
- 81-2,215. Repealed. Laws 1969, c. 793, § 1.
- 81-2,216. Repealed. Laws 1969, c. 793, § 1.

### (u) GRADE A MILK

- 81-2,217. Repealed. Laws 1980, LB 632, § 47.
- 81-2,218. Repealed. Laws 1980, LB 632, § 47.
- 81-2,219. Repealed. Laws 1980, LB 632, § 47.
- 81-2,220. Repealed. Laws 1980, LB 632, § 47.
- 81-2,221. Repealed. Laws 1980, LB 632, § 47.
- 81-2,222. Repealed. Laws 1980, LB 632, § 47.
- 81-2,223. Repealed. Laws 1980, LB 632, § 47.
- 81-2,224. Repealed. Laws 1980, LB 632, § 47.
- 81-2,225. Repealed. Laws 1980, LB 632, § 47.
- 81-2,226. Repealed. Laws 1980, LB 632, § 47.
- 81-2,227. Repealed. Laws 1980, LB 632, § 47.
- 81-2,228. Repealed. Laws 1980, LB 632, § 47.
- 81-2,229. Repealed. Laws 1980, LB 632, § 47.
- 81-2,230. Repealed. Laws 1980, LB 632, § 47.
- 81-2,231. Repealed. Laws 1980, LB 632, § 47.
- 81-2,232. Repealed. Laws 1980, LB 632, § 47.

### (v) ORGANIC FOOD

- 81-2,233. Terms, defined.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-2,234. Department; compile list of persons who grow or raise organic food; adopt rules and regulations; criteria.
- 81-2,235. Persons who grow or raise food products; duty to provide information.  
(w) ANIMAL DAMAGE CONTROL
- 81-2,236. Director; contract and cooperate with federal government; expenditure of funds.
- 81-2,237. Animal Damage Control Cash Fund; created; investment.
- 81-2,238. Director; cooperation with state agencies; receipt of funds.  
(x) NEBRASKA PURE FOOD ACT
- 81-2,239. Nebraska Pure Food Act; provisions included; how cited.
- 81-2,240. Definitions, where found.
- 81-2,241. Advertising, defined.
- 81-2,242. Bed and breakfast establishment, defined.
- 81-2,242.01. Caterer, defined.
- 81-2,242.02. Commissary, defined.
- 81-2,242.03. Convenience store, defined.
- 81-2,242.04. Commercial food establishment, defined.
- 81-2,243. Department, defined.
- 81-2,244. Director, defined.
- 81-2,244.01. Food Code, defined.
- 81-2,245. Repealed. Laws 1997, LB 199, § 63.
- 81-2,245.01. Food establishment, defined.
- 81-2,246. Repealed. Laws 1997, LB 199, § 63.
- 81-2,246.01. Food processing plant, defined.
- 81-2,247. Food Salvage Code, defined.
- 81-2,248. Itinerant food vendor, defined.
- 81-2,249. Repealed. Laws 1997, LB 199, § 63.
- 81-2,250. Repealed. Laws 1997, LB 199, § 63.
- 81-2,251. Labeling, defined.
- 81-2,251.01. Limited food vending machine, defined.
- 81-2,251.02. Licensed beverage establishment, defined.
- 81-2,251.03. Limited food service establishment, defined.
- 81-2,251.04. Mobile food unit, defined.
- 81-2,251.05. Person in charge, defined.
- 81-2,251.06. Pushcart, defined.
- 81-2,252. Regulatory authority, defined.
- 81-2,253. Repealed. Laws 1997, LB 199, § 63.
- 81-2,253.01. Salvage operation, defined.
- 81-2,254. Single event food vendor, defined.
- 81-2,254.01. Temporary food establishment, defined.
- 81-2,255. Repealed. Laws 1997, LB 199, § 63.
- 81-2,256. Repealed. Laws 1997, LB 199, § 63.
- 81-2,257. Priority items; designation.
- 81-2,257.01. Food Code; adoption.
- 81-2,258. Food Salvage Code; adoption.
- 81-2,259. Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food; adoption.
- 81-2,260. Repealed. Laws 1997, LB 199, § 63.
- 81-2,261. Repealed. Laws 1997, LB 199, § 63.
- 81-2,262. Codes and practice; where filed.
- 81-2,263. Inconsistencies; sections control.
- 81-2,264. Repealed. Laws 1997, LB 199, § 63.
- 81-2,265. Repealed. Laws 1997, LB 199, § 63.
- 81-2,266. Repealed. Laws 1997, LB 199, § 63.
- 81-2,267. Food establishment, food processing plant, or salvage operation; construction, conversion, or remodeling; plans and specifications; requirements.
- 81-2,268. Food establishment, food processing plant, or salvage operation facilities and equipment; design and fabrication requirements.

## DEPARTMENT OF AGRICULTURE

### Section

- 81-2,269. Repealed. Laws 1997, LB 199, § 63.
- 81-2,270. Food establishment, food processing plant, or salvage operation; permits; application; contents; fees; late fee; exemptions.
- 81-2,270.01. Repealed. Laws 2003, LB 250, § 29.
- 81-2,271. Food establishment, food processing plant, or salvage operation; permit; posting; change of ownership or location; duties; movement authorized; mobile food unit or pushcart; copy of permit.
- 81-2,272. Food establishment, food processing plant, or salvage operation; inspection; denial of permit; hearing.
- 81-2,272.01. Potentially hazardous food (time and temperature control for safety food); temperature; equipment.
- 81-2,272.02. Repealed. Laws 2012, LB 771, § 10.
- 81-2,272.03. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.04. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.05. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.06. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.07. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.08. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.09. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.10. Food employees; hand washing; food contact; restrictions.
- 81-2,272.11. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.12. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.13. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.14. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.15. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.16. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.17. Repealed. Laws 2012, LB 771, § 10.
- 81-2,272.18. Repealed. Laws 2003, LB 250, § 29.
- 81-2,272.19. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.20. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.21. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.22. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.23. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.24. Potentially hazardous food; date marking; sale, consumption, or discard requirements.
- 81-2,272.25. Potentially hazardous food; discard; when.
- 81-2,272.26. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.27. Food establishment; reduced oxygen packaging method; when.
- 81-2,272.28. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.29. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.30. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.31. Water supply; requirements.
- 81-2,272.32. Food employee; fingernail requirements.
- 81-2,272.33. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.34. Linens and cloth napkins; requirements.
- 81-2,272.35. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.36. Repealed. Laws 2012, LB 771, § 10.
- 81-2,272.37. Repealed. Laws 2007, LB 74, § 12.
- 81-2,273. Permitholder; duties; disciplinary action; effect; hearing; reinstatement of permit.
- 81-2,274. Notice or order; service; contents; hearings; procedure.
- 81-2,275. Food establishment, food processing plant, or salvage operation; unlawful operation.
- 81-2,276. Food establishment, food processing plant, or salvage operation regulation.
- 81-2,277. Food processing plants; compliance required.
- 81-2,278. Repealed. Laws 1997, LB 199, § 63.
- 81-2,279. Repealed. Laws 1997, LB 199, § 63.
- 81-2,280. Repealed. Laws 1997, LB 199, § 63.

## Section

- 81-2,281. Department; enforce act; contract for conduct of certain regulatory functions; exemption from inspection fee; inspections; how conducted; by whom.
- 81-2,282. Adulteration of food; prohibited; adulteration, defined.
- 81-2,283. Misbranded food; prohibited; misbranded, defined.
- 81-2,284. Deceptive packaging of food; prohibited; deceptively packed or packaged, defined.
- 81-2,285. False advertisement regarding food; prohibited; false advertisement, defined.
- 81-2,286. Regulatory authority; determination of violations; use of federal regulations; when.
- 81-2,287. Regulatory authority; enforcement; issue stop-sale, stop-use, removal orders; procedure.
- 81-2,288. Department; adopt rules and regulations; contracts with federal agencies authorized; exemptions from act.
- 81-2,288.01. Regulatory authority; inspection reporting requirements.
- 81-2,288.02. Regulatory authority; inspection intervals.
- 81-2,289. Restraining orders and injunctions; department; county attorney; duties.
- 81-2,290. Violations; penalty; county attorney; duties.
- 81-2,291. Pure Food Cash Fund; created; use; investment.
- 81-2,292. Bed and breakfast establishments; exempt from act.
- (y) LABORATORY TESTING SERVICES
- 81-2,293. Laboratory testing services; system of billing; Agricultural Laboratory Testing Services Cash Fund; created; use; investment.

## (a) GENERAL POWERS

**81-201 Department of Agriculture; general powers.**

The Department of Agriculture shall have power (1) to encourage and promote, in every practicable manner, the interest of agriculture; (2) to promote methods of conducting the industry of agriculture with a view to increasing the production and facilitating the distribution thereof at the least cost; (3) to collect and publish statistics relating to the production and marketing of agricultural products, so far as such statistical information may be of value to the agricultural and allied interests of the state, and to cooperate with the federal government in the matter of collecting and publishing such statistical information; (4) to publish and distribute the Weeds of the Great Plains book and supplemental inserts thereto, for sale and distribution to the public. All money collected from the sale of the publications shall be remitted to the State Treasurer and credited as provided in section 81-201.05; (5) to inquire into the causes of contagious, infectious, and communicable diseases among domestic animals and the means for the prevention and cure of the same; (6) to execute and enforce all laws relating to matters within its jurisdiction and to adopt necessary rules and regulations for the administration and enforcement of such laws; (7) to employ special investigators who shall be appointed deputy state sheriffs by the Governor and who shall, upon qualifying for such office, possess all the powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of the laws of the State of Nebraska within the jurisdiction of the Department of Agriculture; and (8) to perform laboratory testing services as provided in section 81-2,293.

**Source:** Laws 1919, c. 190, tit. III, art. I, § 1, p. 453; C.S.1922, § 7294; C.S.1929, § 81-501; R.S.1943, § 81-201; Laws 1959, c. 424, § 3, p. 1424; Laws 1963, c. 509, § 1, p. 1622; Laws 1965, c. 459, § 22,

p. 1462; Laws 1973, LB 201, § 2; Laws 1975, LB 320, § 1; Laws 1984, LB 976, § 2; Laws 1985, LB 460, § 6; Laws 2004, LB 869, § 8; Laws 2005, LB 51, § 1.

**Cross References**

**Animal disease control**, Department of Agriculture, general powers and duties, see Chapter 54, article 7.

Nebraska State Board of Agriculture is a corporation possessing no immunity from the enforcement of its honest debts and just obligations by the ordinary processes of the courts. *Crete Mills v. Nebraska State Board of Agriculture*, 132 Neb. 244, 271 N.W. 684 (1937).

**81-201.01 Repealed. Laws 1991, LB 358, § 62.**

**81-201.02 Repealed. Laws 1991, LB 358, § 62.**

**81-201.03 Office services; authorized; powers.**

The Department of Agriculture may provide (1) data and word processing services, (2) accounting and auditing services, (3) personnel services, (4) records management services, (5) printing, sorting, and mailing services, (6) statistical services, (7) such services necessary to carry out any duties or responsibilities placed upon the department by the Legislature, and (8) other related services in cooperation with, on behalf of, or for any board, commission, or political subdivision of the state or any other agency of the state or federal government.

**Source:** Laws 1983, LB 579, § 1; Laws 1991, LB 358, § 6.

**81-201.04 Office services; billings and charges; Management Services Expense Revolving Fund; created; receipts; disbursements; investment.**

In conjunction with providing services authorized pursuant to section 81-201.03, the Department of Agriculture shall develop a system of equitable billings and charges for such services. Such system of charges shall reflect, as nearly as may be practical, the actual share of costs incurred on behalf of or for such services to any board, commission, or political subdivision of the state or any other agency of the state or federal government. Any board, commission, or political subdivision of the state or any other agency of the state or federal government which uses such services shall pay for the services out of appropriated or available funds.

There is hereby created the Management Services Expense Revolving Fund. All gifts, grants, and fees or charges collected for such services from any source, including federal, state, public, or private sources, and any appropriation by the Legislature for such purpose shall be credited to such fund. Expenditures shall be made from the fund for the payment of expenses. Such payments shall be made by the Director of Agriculture. 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 579, § 2; Laws 1991, LB 358, § 7; Laws 1994, LB 1066, § 97.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-201.05 Weed Book Cash Fund; created; use; investment.**

(1) The Weed Book Cash Fund is created. On July 1, 2005, July 1, 2006, July 1, 2007, July 1, 2008, and July 1, 2009, if there are sufficient funds available, twenty-five thousand dollars shall be transferred from the Weed Book Cash Fund to the Noxious Weed Cash Fund. Transfers may be made from the Weed Book Cash Fund to the General Fund at the direction of the Legislature. Any money in the Weed Book 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.

(2) The sale price of each Weeds of the Great Plains book sold by the Department of Agriculture shall be credited as follows:

(a) Seventy-five percent to the Weed Book Cash Fund to aid in defraying the cost of publishing, preparing, and distributing such books and any supplemental inserts to such books; and

(b) Twenty-five percent to the Noxious Weed Cash Fund.

**Source:** Laws 1984, LB 976, § 1; Laws 1995, LB 7, § 97; Laws 2004, LB 869, § 9; Laws 2009, First Spec. Sess., LB3, § 62.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **81-202 Department of Agriculture; Bureau of Animal Industry; State Veterinarian; exercise of powers.**

Within the Department of Agriculture there shall be a Bureau of Animal Industry, with the State Veterinarian in charge, subordinate only to the Director of Agriculture. The powers and duties of the department provided by law for the protection of the health of livestock as defined in section 54-701.03 shall be exercised and discharged through the Bureau of Animal Industry under the direction of the State Veterinarian.

**Source:** Laws 1933, c. 149, § 4, p. 572; C.S.Supp., 1941, § 81-107; R.S. 1943, § 81-202; Laws 1961, c. 419, § 2, p. 1282; Laws 1965, c. 334, § 9, p. 958; Laws 1993, LB 267, § 26.

#### Cross References

For livestock, general provisions, see Chapter 54.

For pathogenic microorganisms, see sections 71-1801 to 71-1805.

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

### **81-202.01 State Veterinarian; office created; appointment; salary; qualifications.**

There is hereby established the position of State Veterinarian, to be appointed by the Director of Agriculture. The State Veterinarian shall hold office at the will of the director. The State Veterinarian shall receive such salary as fixed by the director and approved by the Governor. The State Veterinarian shall have authority to employ assistants and fix their compensation, subject to the approval of the director. The State Veterinarian shall be a graduate of an approved College of Veterinary Medicine, shall be licensed and accredited as a veterinarian and shall have demonstrated administrative ability.

**Source:** Laws 1965, c. 334, § 1, p. 955.

### **81-202.02 State Veterinarian; rules and regulations; adoption.**

The State Veterinarian shall have authority to adopt such rules and regulations as are necessary or convenient to the effective discharge of his duties and the proper function of the Bureau of Animal Industry, subject to the approval of the Director of Agriculture. Such rules and regulations shall be adopted in the manner and as provided by law.

**Source:** Laws 1965, c. 334, § 1, p. 955.

(b) FOOD CODES

**81-203 Repealed. Laws 1965, c. 546, § 18.**

**81-204 Repealed. Laws 1965, c. 546, § 18.**

**81-205 Repealed. Laws 1965, c. 546, § 18.**

**81-206 Repealed. Laws 1965, c. 546, § 18.**

**81-207 Repealed. Laws 1965, c. 546, § 18.**

**81-208 Repealed. Laws 1965, c. 546, § 18.**

**81-209 Repealed. Laws 1965, c. 546, § 18.**

**81-210 Repealed. Laws 1965, c. 546, § 18.**

**81-211 Repealed. Laws 1965, c. 546, § 18.**

**81-212 Repealed. Laws 1965, c. 546, § 18.**

**81-213 Repealed. Laws 1965, c. 546, § 18.**

**81-214 Repealed. Laws 1965, c. 546, § 18.**

**81-215 Repealed. Laws 1965, c. 546, § 18.**

**81-216 Repealed. Laws 1965, c. 546, § 18.**

**81-216.01 Transferred to section 81-2,239.**

**81-216.02 Transferred to section 81-2,240.**

**81-216.03 Transferred to section 81-2,248.**

**81-216.04 Transferred to section 81-2,253.**

**81-216.05 Transferred to section 81-2,247.**

**81-216.06 Transferred to section 81-2,250.**

**81-216.07 Transferred to section 81-2,246.**

**81-216.08 Transferred to section 81-2,243.**

**81-216.09 Transferred to section 81-2,244.**

**81-216.10 Transferred to section 81-2,251.**

**81-216.11 Transferred to section 81-2,241.**

**81-216.12 Transferred to section 81-2,252.**

81-216.13 Transferred to section 81-2,249.

81-216.14 Repealed. Laws 1991, LB 358, § 62.

81-216.15 Transferred to section 81-2,259.

81-216.16 Transferred to section 81-2,261.

81-216.17 Transferred to section 81-2,258.

81-216.18 Transferred to section 81-2,260.

81-216.19 Transferred to section 81-2,257.

81-216.20 Transferred to section 81-2,262.

81-216.21 Transferred to section 81-2,270.

81-216.22 Transferred to section 81-2,276.

81-216.23 Transferred to section 81-2,277.

81-216.24 Transferred to section 81-2,278.

81-216.25 Transferred to section 81-2,279.

81-216.26 Transferred to section 81-2,280.

81-216.27 Transferred to section 81-2,281.

81-216.28 Transferred to section 81-2,282.

81-216.29 Transferred to section 81-2,283.

81-216.30 Transferred to section 81-2,284.

81-216.31 Transferred to section 81-2,285.

81-216.32 Transferred to section 81-2,286.

81-216.33 Transferred to section 81-2,287.

81-216.34 Transferred to section 81-2,288.

81-216.35 Transferred to section 81-2,289.

81-216.36 Transferred to section 81-2,290.

81-216.37 Transferred to section 81-2,291.

81-216.38 Transferred to section 81-2,292.

81-216.39 Transferred to section 81-2,242.

81-217 Repealed. Laws 1981, LB 487, § 62.

81-217.01 Repealed. Laws 1981, LB 487, § 62.

81-217.02 Repealed. Laws 1981, LB 487, § 62.

81-217.03 Repealed. Laws 1981, LB 487, § 62.

- 81-217.04 Repealed. Laws 1981, LB 487, § 62.
- 81-217.05 Repealed. Laws 1981, LB 487, § 62.
- 81-217.06 Repealed. Laws 1981, LB 487, § 62.
- 81-217.07 Repealed. Laws 1981, LB 487, § 62.
- 81-217.08 Repealed. Laws 1981, LB 487, § 62.
- 81-217.09 Repealed. Laws 1981, LB 487, § 62.
- 81-217.10 Repealed. Laws 1981, LB 487, § 62.
- 81-217.11 Repealed. Laws 1981, LB 487, § 62.
- 81-217.12 Repealed. Laws 1981, LB 487, § 62.
- 81-217.13 Repealed. Laws 1981, LB 487, § 62.
- 81-217.14 Repealed. Laws 1981, LB 487, § 62.
- 81-217.15 Repealed. Laws 1981, LB 487, § 62.
- 81-217.16 Repealed. Laws 1981, LB 487, § 62.
- 81-217.17 Repealed. Laws 1981, LB 487, § 62.
- 81-217.18 Repealed. Laws 1981, LB 487, § 62.
- 81-217.19 Repealed. Laws 1981, LB 487, § 62.
- 81-217.20 Repealed. Laws 1981, LB 487, § 62.
- 81-217.21 Repealed. Laws 1981, LB 487, § 62.
- 81-217.22 Repealed. Laws 1981, LB 487, § 62.
- 81-217.23 Repealed. Laws 1981, LB 487, § 62.
- 81-217.24 Repealed. Laws 1981, LB 487, § 62.
- 81-217.25 Repealed. Laws 1981, LB 487, § 62.
- 81-217.26 Repealed. Laws 1981, LB 487, § 62.
- 81-217.27 Repealed. Laws 1981, LB 487, § 62.
- 81-217.28 Repealed. Laws 1981, LB 487, § 62.
- 81-217.29 Transferred to section 25-21,189.
- 81-217.30 Repealed. Laws 1987, LB 201, § 7.
- 81-217.31 Transferred to section 28-1483.
- 81-217.32 Repealed. Laws 1987, LB 201, § 7.

(c) FROZEN DESSERTS

- 81-218 Repealed. Laws 1980, LB 632, § 47.

- 81-218.01 Repealed. Laws 1980, LB 632, § 47.
- 81-218.02 Repealed. Laws 1980, LB 632, § 47.
- 81-218.03 Repealed. Laws 1980, LB 632, § 47.
- 81-218.04 Repealed. Laws 1980, LB 632, § 47.
- 81-218.05 Repealed. Laws 1980, LB 632, § 47.
- 81-218.06 Repealed. Laws 1980, LB 632, § 47.
- 81-218.07 Repealed. Laws 1980, LB 632, § 47.
- 81-218.08 Repealed. Laws 1980, LB 632, § 47.
- 81-218.09 Repealed. Laws 1980, LB 632, § 47.
- 81-218.10 Repealed. Laws 1980, LB 632, § 47.
- 81-218.11 Repealed. Laws 1980, LB 632, § 47.
- 81-219 Repealed. Laws 1980, LB 632, § 47.
- 81-220 Repealed. Laws 1980, LB 632, § 47.
- 81-221 Repealed. Laws 1980, LB 632, § 47.
- 81-222 Repealed. Laws 1980, LB 632, § 47.
- 81-223 Repealed. Laws 1980, LB 632, § 47.
- 81-224 Repealed. Laws 1980, LB 632, § 47.
- 81-225 Repealed. Laws 1980, LB 632, § 47.
- 81-226 Repealed. Laws 1980, LB 632, § 47.
- 81-227 Repealed. Laws 1980, LB 632, § 47.
- 81-228 Repealed. Laws 1980, LB 632, § 47.

(d) CONTROL OF DAIRY INDUSTRY

- 81-229 Repealed. Laws 1996, LB 966, § 4.
- 81-230 Repealed. Laws 1980, LB 632, § 47.
- 81-230.01 Repealed. Laws 1980, LB 632, § 47.
- 81-231 Repealed. Laws 1980, LB 632, § 47.
- 81-232 Repealed. Laws 1980, LB 632, § 47.
- 81-233 Repealed. Laws 1980, LB 632, § 47.
- 81-234 Repealed. Laws 1980, LB 632, § 47.
- 81-235 Repealed. Laws 1980, LB 632, § 47.
- 81-236 Repealed. Laws 1980, LB 632, § 47.

- 81-237 Repealed. Laws 1980, LB 632, § 47.
- 81-238 Repealed. Laws 1980, LB 632, § 47.
- 81-239 Repealed. Laws 1980, LB 632, § 47.
- 81-240 Repealed. Laws 1980, LB 632, § 47.
- 81-241 Repealed. Laws 1980, LB 632, § 47.
- 81-242 Repealed. Laws 1980, LB 632, § 47.
- 81-243 Repealed. Laws 1980, LB 632, § 47.
- 81-244 Repealed. Laws 1980, LB 632, § 47.
- 81-245 Repealed. Laws 1980, LB 632, § 47.
- 81-246 Repealed. Laws 1980, LB 632, § 47.
- 81-247 Repealed. Laws 1980, LB 632, § 47.
- 81-248 Repealed. Laws 1980, LB 632, § 47.
- 81-249 Repealed. Laws 1980, LB 632, § 47.
- 81-250 Repealed. Laws 1980, LB 632, § 47.
- 81-251 Repealed. Laws 1980, LB 632, § 47.
- 81-252 Repealed. Laws 1980, LB 632, § 47.
- 81-253 Repealed. Laws 1980, LB 632, § 47.
- 81-254 Repealed. Laws 1980, LB 632, § 47.
- 81-255 Repealed. Laws 1980, LB 632, § 47.
- 81-256 Repealed. Laws 1980, LB 632, § 47.
- 81-257 Repealed. Laws 1980, LB 632, § 47.
- 81-258 Repealed. Laws 1986, LB 900, § 38.
- 81-259 Repealed. Laws 1986, LB 900, § 38.
- 81-260 Repealed. Laws 1986, LB 900, § 38.
- 81-261 Repealed. Laws 1986, LB 900, § 38.
- 81-262 Repealed. Laws 1996, LB 966, § 4.
- 81-263 Repealed. Laws 1986, LB 900, § 38.
- 81-263.01 Repealed. Laws 1961, c. 285, § 1.
- 81-263.02 Repealed. Laws 1961, c. 285, § 1.
- 81-263.03 Repealed. Laws 1961, c. 285, § 1.
- 81-263.04 Repealed. Laws 1961, c. 285, § 1.

- 81-263.05 Repealed. Laws 1961, c. 285, § 1.
- 81-263.06 Repealed. Laws 1961, c. 285, § 1.
- 81-263.07 Repealed. Laws 1961, c. 285, § 1.
- 81-263.08 Repealed. Laws 1961, c. 285, § 1.
- 81-263.09 Repealed. Laws 1961, c. 285, § 1.
- 81-263.10 Repealed. Laws 1961, c. 285, § 1.
- 81-263.11 Repealed. Laws 1967, c. 580, § 33.
- 81-263.12 Repealed. Laws 1967, c. 580, § 33.
- 81-263.13 Repealed. Laws 1967, c. 580, § 33.
- 81-263.14 Repealed. Laws 1967, c. 580, § 33.
- 81-263.15 Repealed. Laws 1967, c. 580, § 33.
- 81-263.16 Repealed. Laws 1967, c. 580, § 33.
- 81-263.17 Repealed. Laws 1967, c. 580, § 33.
- 81-263.18 Repealed. Laws 1967, c. 580, § 33.
- 81-263.19 Repealed. Laws 1967, c. 580, § 33.
- 81-263.20 Repealed. Laws 1967, c. 580, § 33.
- 81-263.21 Repealed. Laws 1967, c. 580, § 33.
- 81-263.22 Repealed. Laws 1967, c. 580, § 33.
- 81-263.23 Repealed. Laws 1967, c. 580, § 33.
- 81-263.24 Repealed. Laws 1967, c. 580, § 33.
- 81-263.25 Repealed. Laws 1967, c. 580, § 33.
- 81-263.26 Repealed. Laws 1967, c. 580, § 33.
- 81-263.27 Repealed. Laws 1967, c. 580, § 33.
- 81-263.28 Repealed. Laws 1967, c. 580, § 33.
- 81-263.29 Repealed. Laws 1967, c. 580, § 33.
- 81-263.30 Repealed. Laws 1967, c. 580, § 33.
- 81-263.31 Repealed. Laws 1967, c. 580, § 33.
- 81-263.32 Repealed. Laws 1967, c. 580, § 33.
- 81-263.33 Repealed. Laws 1967, c. 580, § 33.
- 81-263.34 Repealed. Laws 1967, c. 580, § 33.
- 81-263.35 Repealed. Laws 1967, c. 580, § 33.

- 81-263.36 Repealed. Laws 1967, c. 580, § 33.
- 81-263.37 Repealed. Laws 1975, LB 324, § 1.
- 81-263.38 Repealed. Laws 1975, LB 324, § 1.
- 81-263.39 Repealed. Laws 1975, LB 324, § 1.
- 81-263.40 Repealed. Laws 1975, LB 324, § 1.
- 81-263.41 Repealed. Laws 1975, LB 324, § 1.
- 81-263.42 Repealed. Laws 1975, LB 324, § 1.
- 81-263.43 Repealed. Laws 1975, LB 324, § 1.
- 81-263.44 Repealed. Laws 1975, LB 324, § 1.
- 81-263.45 Repealed. Laws 1975, LB 324, § 1.
- 81-263.46 Repealed. Laws 1975, LB 324, § 1.
- 81-263.47 Repealed. Laws 1975, LB 324, § 1.
- 81-263.48 Repealed. Laws 1975, LB 324, § 1.
- 81-263.49 Repealed. Laws 1975, LB 324, § 1.
- 81-263.50 Repealed. Laws 1980, LB 632, § 47.
- 81-263.51 Repealed. Laws 1980, LB 632, § 47.
- 81-263.52 Repealed. Laws 1980, LB 632, § 47.
- 81-263.53 Repealed. Laws 1980, LB 632, § 47.
- 81-263.54 Repealed. Laws 1980, LB 632, § 47.
- 81-263.55 Repealed. Laws 1980, LB 632, § 47.
- 81-263.56 Repealed. Laws 1980, LB 632, § 47.
- 81-263.57 Repealed. Laws 1980, LB 632, § 47.
- 81-263.58 Repealed. Laws 1980, LB 632, § 47.
- 81-263.59 Repealed. Laws 1980, LB 632, § 47.
- 81-263.60 Repealed. Laws 1980, LB 632, § 47.
- 81-263.61 Repealed. Laws 1980, LB 632, § 47.
- 81-263.62 Repealed. Laws 1980, LB 632, § 47.
- 81-263.63 Repealed. Laws 1980, LB 632, § 47.
- 81-263.64 Repealed. Laws 1980, LB 632, § 47.
- 81-263.65 Repealed. Laws 1980, LB 632, § 47.
- 81-263.66 Repealed. Laws 1980, LB 632, § 47.

- 81-263.67 Repealed. Laws 1980, LB 632, § 47.
- 81-263.68 Repealed. Laws 1980, LB 632, § 47.
- 81-263.69 Repealed. Laws 1980, LB 632, § 47.
- 81-263.70 Repealed. Laws 1980, LB 632, § 47.
- 81-263.71 Repealed. Laws 1980, LB 632, § 47.
- 81-263.72 Repealed. Laws 1980, LB 632, § 47.
- 81-263.73 Repealed. Laws 1980, LB 632, § 47.
- 81-263.74 Repealed. Laws 1980, LB 632, § 47.
- 81-263.75 Repealed. Laws 1980, LB 632, § 47.
- 81-263.76 Repealed. Laws 1980, LB 632, § 47.
- 81-263.77 Repealed. Laws 1980, LB 632, § 47.
- 81-263.78 Repealed. Laws 1980, LB 632, § 47.
- 81-263.79 Repealed. Laws 1980, LB 632, § 47.
- 81-263.80 Repealed. Laws 1980, LB 632, § 47.
- 81-263.81 Repealed. Laws 1975, LB 324, § 1.
- 81-263.82 Repealed. Laws 1975, LB 324, § 1.
- 81-263.83 Repealed. Laws 1975, LB 324, § 1.
- 81-263.84 Repealed. Laws 1975, LB 324, § 1.
- 81-263.85 Repealed. Laws 1975, LB 324, § 1.
- 81-263.86 Repealed. Laws 1975, LB 324, § 1.
- 81-263.87 Repealed. Laws 1980, LB 632, § 47.
- 81-263.88 Transferred to section 2-3913.
- 81-263.89 Transferred to section 2-3914.
- 81-263.90 Transferred to section 2-3915.
- 81-263.91 Transferred to section 2-3916.
- 81-263.92 Repealed. Laws 1980, LB 632, § 47.
- 81-263.93 Repealed. Laws 1980, LB 632, § 47.
- 81-263.94 Transferred to section 2-3918.
- 81-263.95 Transferred to section 2-3919.
- 81-263.96 Transferred to section 2-3920.
- 81-263.97 Transferred to section 2-3921.

- 81-263.98 Transferred to section 2-3922.
- 81-263.99 Transferred to section 2-3923.
- 81-263.100 Transferred to section 2-3924.
- 81-263.101 Transferred to section 2-3925.
- 81-263.102 Repealed. Laws 1980, LB 632, § 47.
- 81-263.103 Repealed. Laws 1980, LB 632, § 47.
- 81-263.104 Repealed. Laws 1980, LB 632, § 47.
- 81-263.105 Repealed. Laws 1980, LB 632, § 47.
- 81-263.106 Transferred to section 2-3931.
- 81-263.107 Transferred to section 2-3932.
- 81-263.108 Transferred to section 2-3933.
- 81-263.109 Transferred to section 2-3934.
- 81-263.110 Transferred to section 2-3935.
- 81-263.111 Transferred to section 2-3936.
- 81-263.112 Repealed. Laws 1980, LB 632, § 47.
- 81-263.113 Repealed. Laws 1980, LB 632, § 47.
- 81-263.114 Transferred to section 2-3937.
- 81-263.115 Repealed. Laws 1980, LB 632, § 47.
- 81-263.116 Transferred to section 2-3938.
- 81-263.117 Transferred to section 2-3947.
- 81-263.118 Transferred to section 2-3939.
- 81-263.119 Transferred to section 2-3942.
- 81-263.120 Transferred to section 2-3943.
- 81-263.121 Transferred to section 2-3944.
- 81-263.122 Transferred to section 2-3945.
- 81-263.123 Repealed. Laws 1980, LB 632, § 47.

(e) CONDENSED MILK

- 81-264 Repealed. Laws 1980, LB 632, § 47.
- 81-265 Repealed. Laws 1980, LB 632, § 47.
- 81-266 Repealed. Laws 1980, LB 632, § 47.
- 81-267 Repealed. Laws 1980, LB 632, § 47.

## (f) EGGS

81-268 Repealed. Laws 1955, c. 332, § 15.

81-269 Repealed. Laws 1955, c. 332, § 15.

81-270 Repealed. Laws 1955, c. 332, § 15.

81-271 Repealed. Laws 1955, c. 332, § 15.

81-272 Repealed. Laws 1955, c. 332, § 15.

81-273 Repealed. Laws 1955, c. 332, § 15.

81-274 Repealed. Laws 1949, c. 279, § 6.

81-275 Repealed. Laws 1955, c. 332, § 15.

81-275.01 Repealed. Laws 1961, c. 424, § 20.

81-275.02 Repealed. Laws 1961, c. 424, § 20.

81-275.03 Repealed. Laws 1961, c. 424, § 20.

81-275.04 Repealed. Laws 1961, c. 424, § 20.

81-275.05 Repealed. Laws 1961, c. 424, § 20.

81-275.06 Repealed. Laws 1961, c. 424, § 20.

81-275.07 Repealed. Laws 1961, c. 424, § 20.

81-275.08 Repealed. Laws 1961, c. 424, § 20.

81-275.09 Repealed. Laws 1961, c. 424, § 20.

81-275.10 Repealed. Laws 1961, c. 424, § 20.

81-275.11 Repealed. Laws 1961, c. 424, § 20.

81-275.12 Repealed. Laws 1961, c. 424, § 20.

81-275.13 Repealed. Laws 1961, c. 424, § 20.

81-275.14 Repealed. Laws 1961, c. 424, § 20.

81-275.15 Repealed. Laws 1977, LB 268, § 27.

81-275.16 Repealed. Laws 1977, LB 268, § 27.

81-275.17 Repealed. Laws 1977, LB 268, § 27.

81-275.18 Repealed. Laws 1977, LB 268, § 27.

81-275.19 Repealed. Laws 1977, LB 268, § 27.

81-275.20 Repealed. Laws 1977, LB 268, § 27.

81-275.21 Repealed. Laws 1977, LB 268, § 27.

81-275.22 Repealed. Laws 1977, LB 268, § 27.

81-275.23 Repealed. Laws 1977, LB 268, § 27.

81-275.24 Repealed. Laws 1977, LB 268, § 27.

81-275.25 Repealed. Laws 1977, LB 268, § 27.

81-275.26 Repealed. Laws 1977, LB 268, § 27.

81-275.27 Repealed. Laws 1977, LB 268, § 27.

81-275.28 Repealed. Laws 1977, LB 268, § 27.

81-275.29 Repealed. Laws 1977, LB 268, § 27.

81-275.30 Repealed. Laws 1977, LB 268, § 27.

81-275.31 Repealed. Laws 1977, LB 268, § 27.

81-275.32 Repealed. Laws 1977, LB 268, § 27.

81-275.33 Repealed. Laws 1977, LB 268, § 27.

81-275.34 Repealed. Laws 1977, LB 268, § 27.

81-275.35 Repealed. Laws 1977, LB 268, § 27.

(g) PRODUCE COMMISSION MERCHANTS

81-276 Repealed. Laws 1980, LB 633, § 10.

81-277 Repealed. Laws 1980, LB 633, § 10.

81-278 Repealed. Laws 1980, LB 633, § 10.

81-279 Repealed. Laws 1980, LB 633, § 10.

81-280 Repealed. Laws 1980, LB 633, § 10.

(h) CIDER AND VINEGAR

81-281 Repealed. Laws 1965, c. 546, § 18.

81-282 Repealed. Laws 1965, c. 546, § 18.

81-283 Repealed. Laws 1965, c. 546, § 18.

81-284 Repealed. Laws 1965, c. 546, § 18.

81-285 Repealed. Laws 1965, c. 546, § 18.

81-286 Repealed. Laws 1965, c. 546, § 18.

(i) OLEOMARGARINE AND BUTTERINE

81-287 Repealed. Laws 1980, LB 632, § 47.

81-288 Repealed. Laws 1980, LB 632, § 47.

81-289 Repealed. Laws 1980, LB 632, § 47.

- 81-290 Repealed. Laws 1980, LB 632, § 47.
- 81-291 Repealed. Laws 1980, LB 632, § 47.
- 81-292 Repealed. Laws 1980, LB 632, § 47.
- 81-293 Repealed. Laws 1980, LB 632, § 47.
- 81-294 Repealed. Laws 1972, LB 1410, § 3.
- 81-295 Repealed. Laws 1972, LB 1410, § 3.
- 81-296 Repealed. Laws 1972, LB 1410, § 3.
- 81-297 Repealed. Laws 1972, LB 1410, § 3.
- 81-298 Repealed. Laws 1972, LB 1410, § 3.
- 81-299 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,100 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,101 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,102 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,103 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,104 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,105 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,106 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,107 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,108 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,109 Repealed. Laws 1972, LB 1410, § 3.
- 81-2,110 Repealed. Laws 1972, LB 1410, § 3.

(j) FOOD; PREMISES USED FOR MANUFACTURE  
OR PREPARATION; SANITATION

- 81-2,111 Repealed. Laws 1981, LB 487, § 62.
- 81-2,111.01 Repealed. Laws 1981, LB 487, § 62.
- 81-2,112 Repealed. Laws 1981, LB 487, § 62.
- 81-2,113 Repealed. Laws 1981, LB 487, § 62.
- 81-2,114 Repealed. Laws 1981, LB 487, § 62.
- 81-2,115 Repealed. Laws 1981, LB 487, § 62.
- 81-2,116 Repealed. Laws 1981, LB 487, § 62.
- 81-2,117 Repealed. Laws 1981, LB 487, § 62.

81-2,118 Repealed. Laws 1981, LB 487, § 62.

81-2,119 Repealed. Laws 1981, LB 487, § 62.

81-2,120 Repealed. Laws 1981, LB 487, § 62.

81-2,121 Repealed. Laws 1981, LB 487, § 62.

(k) COLD STORAGE WAREHOUSES

81-2,122 Repealed. Laws 1981, LB 487, § 62.

81-2,123 Repealed. Laws 1981, LB 487, § 62.

81-2,124 Repealed. Laws 1981, LB 487, § 62.

81-2,125 Repealed. Laws 1947, c. 319, § 3.

81-2,126 Repealed. Laws 1947, c. 319, § 3.

81-2,127 Repealed. Laws 1981, LB 487, § 62.

81-2,128 Repealed. Laws 1947, c. 319, § 3.

81-2,129 Repealed. Laws 1981, LB 487, § 62.

81-2,130 Repealed. Laws 1947, c. 319, § 3.

81-2,131 Repealed. Laws 1947, c. 319, § 3.

81-2,132 Repealed. Laws 1981, LB 487, § 62.

81-2,133 Repealed. Laws 1981, LB 487, § 62.

81-2,134 Repealed. Laws 1981, LB 487, § 62.

(l) FROZEN FOOD LOCKER PLANTS

81-2,134.01 Repealed. Laws 1981, LB 487, § 62.

81-2,134.02 Repealed. Laws 1957, c. 371, § 6.

81-2,134.03 Repealed. Laws 1981, LB 487, § 62.

81-2,134.04 Repealed. Laws 1981, LB 487, § 62.

81-2,134.05 Repealed. Laws 1981, LB 487, § 62.

81-2,134.06 Repealed. Laws 1981, LB 487, § 62.

81-2,134.07 Repealed. Laws 1981, LB 487, § 62.

81-2,134.08 Repealed. Laws 1981, LB 487, § 62.

81-2,134.09 Repealed. Laws 1981, LB 487, § 62.

81-2,134.10 Repealed. Laws 1981, LB 487, § 62.

81-2,134.11 Repealed. Laws 1981, LB 487, § 62.

(m) SEEDS

81-2,135 Repealed. Laws 1945, c. 237, § 14.

81-2,135.01 Repealed. Laws 1969, c. 759, § 11.

81-2,136 Repealed. Laws 1945, c. 237, § 14.

81-2,136.01 Repealed. Laws 1969, c. 759, § 11.

81-2,136.02 Repealed. Laws 1969, c. 759, § 11.

81-2,137 Repealed. Laws 1945, c. 237, § 14.

81-2,137.01 Repealed. Laws 1969, c. 759, § 11.

81-2,138 Repealed. Laws 1945, c. 237, § 14.

81-2,138.01 Repealed. Laws 1969, c. 759, § 11.

81-2,139 Repealed. Laws 1945, c. 237, § 14.

81-2,139.01 Repealed. Laws 1969, c. 759, § 11.

81-2,140 Repealed. Laws 1945, c. 237, § 14.

81-2,140.01 Repealed. Laws 1969, c. 759, § 11.

81-2,141 Repealed. Laws 1945, c. 237, § 14.

81-2,141.01 Repealed. Laws 1969, c. 759, § 11.

81-2,141.02 Repealed. Laws 1969, c. 759, § 11.

81-2,141.03 Repealed. Laws 1969, c. 759, § 11.

81-2,142 Repealed. Laws 1945, c. 237, § 14.

81-2,142.01 Repealed. Laws 1969, c. 759, § 11.

81-2,143 Repealed. Laws 1945, c. 237, § 14.

81-2,143.01 Repealed. Laws 1969, c. 759, § 11.

81-2,144 Repealed. Laws 1945, c. 237, § 14.

81-2,144.01 Repealed. Laws 1969, c. 759, § 11.

81-2,145 Repealed. Laws 1945, c. 237, § 14.

81-2,145.01 Repealed. Laws 1969, c. 759, § 11.

81-2,146 Repealed. Laws 1945, c. 237, § 14.

81-2,146.01 Repealed. Laws 1969, c. 759, § 11.

81-2,147 Law, how cited.

Sections 81-2,147 to 81-2,147.12 shall be known and cited as the Nebraska Seed Law.

**Source:** Laws 1969, c. 759, § 1, p. 2860; Laws 1985, LB 460, § 11; Laws 2009, LB263, § 2.

**81-2,147.01 Terms, defined.**

As used in the Nebraska Seed Law:

(1) Advertisement means all representations, other than those on the label, disseminated in any manner or by any means relating to seed, including farm grain represented as suitable for sowing, within the scope of the Nebraska Seed Law;

(2) Agricultural seed includes the seeds of grass, forage, cereal, oil and fiber crops, and lawn and mixtures of such seeds and any other kinds of seed commonly recognized within this state as agricultural seeds and may include the seed of any plant that is being used as an agricultural crop when the Director of Agriculture establishes in rules and regulations that such seed is being used as agricultural seed;

(3) Blend means seeds consisting of more than one variety of a kind, each in excess of five percent by weight of the whole;

(4) Brand means a word, name, symbol, number, or design to identify seed of one person to distinguish it from seed of another person;

(5) Certifying agency means (a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure genetic purity and identity of the seed certified or (b) an agency of a foreign country which is determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by certifying agencies under subdivision (a) of this subdivision;

(6) Conditioning means drying, cleaning, scarifying, or other operations which could change the purity or germination of the seed and require the seed lot or any definite amount of seed to be retested to determine the label information;

(7) Director means the Director of Agriculture or his or her designated employee or representative or authorized agent;

(8) Dormant seed means viable seeds, other than hard seeds, which fail to germinate when provided the specified germination conditions for the kind of seed in question;

(9) Flower seed includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known and sold under the name of flower or wildflower seeds in this state;

(10) Germination means the emergence and development from the seed embryo of those essential structures which for the kind of seed in question are indicative of the ability to produce a normal plant under favorable conditions;

(11) Hard seed means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat;

(12) Hybrid means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines, (b) one inbred or a single cross with an open-pollinated variety, or (c) two varieties or species except open-pollinated varieties of corn (*Zea mays*). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

(13) Inert matter means all matter not seed which includes broken seeds, sterile florets, chaff, fungus bodies, and stones as established by rules and regulations;

(14) Kind means one or more related species or subspecies which singly or collectively are known by one common name, such as corn, oats, alfalfa, and timothy;

(15) Labeling includes all labels and other written, printed, stamped, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed, whether in bulk or in containers, and includes representations on invoices;

(16) Lot means a definite quantity of seed in containers or bulk identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling;

(17) Mixture, mix, or mixed means seeds consisting of more than one kind, each present in excess of five percent by weight of the whole;

(18) Mulch means a protective covering of any suitable material placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aids in preventing the evaporation of soil moisture, controlling weeds, and preventing erosion;

(19) Origin means a foreign country or designated portion thereof, a state, the District of Columbia, Puerto Rico, or a possession of the United States, where the seed was grown;

(20) Other crop seed means seed of plants grown as crops, other than the kind or variety included in the pure seed, as established by rules and regulations;

(21) Person includes any corporation, company, society, association, body politic and corporate, community, individual, partnership, limited liability company, or joint-stock company or the public generally;

(22) Primary noxious weed seeds means the seeds of any plant designated by the director as a noxious weed pursuant to the Noxious Weed Control Act. Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this primary noxious weed seeds list;

(23) Prohibited noxious weed seeds means the seeds of plants which are highly destructive and difficult to control in this state by ordinary good cultural practice, the use of herbicides, or both and includes field bindweed (*Convolvulus arvensis*), hoary cress (*Cardaria draba*), Russian knapweed (*Centaurea repens*), johnsongrass (*Sorghum halepense*), Scotch thistle (*Onopordum acanthium*), morning glory (*Ipomoea purpurea*) when found in field crop seeds, skeletonleaf bursage (*Ambrosia discolor*), woollyleaf bursage (*Ambrosia tomentosa*), serrated tussock (*Nassella trichotoma*), and puncturevine (*Tribulus terrestris*). Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this prohibited noxious weed seeds list;

(24) Pure live seed means the product of the percent of germination plus percent of hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result shall be expressed as a whole number;

(25) Pure seed means seed exclusive of inert matter and all other seeds not of the seed being considered as established by rules and regulations;

(26) Record means any and all information which relates to the origin, treatment, germination, purity, kind, and variety of each lot or definite amount of seed handled in this state. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations;

(27) Restricted noxious weed seeds means the seeds of plants which are objectionable in fields, lawns, and gardens of this state but can be controlled by ordinary good cultural practice, the use of herbicides, or both and includes dodder (*Cuscuta* spp.), wild mustard (*Brassica* spp.), dock (*Rumex* spp.), quackgrass (*Elytrigia repens*), pennycress (*Thlaspi arvense*), purple loosetrife (*Lythrum salicaria*), and horsenettle (*Solanum carolinense*). Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this restricted noxious weed seeds list;

(28) Sale in any of its variant forms means sale, to barter, exchange, offer for sale, expose for sale, move, or transport, in any of their variant forms, or otherwise supplying;

(29) Screenings means the results of the process which removes, in any way, weed seed, inert matter, and other materials from any agricultural, vegetable, or flower seed in any kind of cleaning process;

(30) Seizure means a legal process carried out by court order against a definite amount or lot of seed;

(31) Stop-sale order means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount or lot of seed;

(32) Tetrazolium (TZ) test means a type of test in which chemicals are used to produce differential staining of strong, weak, and dead tissues, which is indicative of the potential viability of seeds;

(33) Treated means that the seed has been given an application of a substance or subjected to a process or coating for which a claim is made or which is designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom;

(34) Variety means a subdivision of a kind which is distinct, uniform, and stable. For purposes of this subdivision: (a) Distinct means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; (b) uniform means that variations in essential and distinctive characteristics are describable; and (c) stable means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties;

(35) Vegetable seed includes the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state; and

(36) Weed seed includes the seeds of any plant generally recognized as a weed within this state as established in rules and regulations and includes the

primary noxious weed seeds, prohibited noxious weed seeds, and restricted noxious weed seeds.

**Source:** Laws 1969, c. 759, § 2, p. 2860; Laws 1980, LB 633, § 3; Laws 1985, LB 460, § 12; Laws 1990, LB 37, § 1; Laws 1992, LB 366, § 25; Laws 1993, LB 121, § 524; Laws 1997, LB 263, § 2; Laws 2012, LB770, § 1.

**Cross References**

Noxious Weed Control Act, see section 2-945.01.

**81-2,147.02 Container; labeling requirements.**

Each container of agricultural, vegetable, or flower seeds which is sold within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container:

(1) For any agricultural seeds or any mixture thereof, any vegetable seeds or any mixture thereof, or any flower seeds or any mixture thereof for sowing purposes that have been treated, unless each seed container bears a label giving the following information and statements as established in the rules and regulations:

(a) A word or statement indicating that the seeds have been treated;

(b) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment;

(c) If the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the director as adequate for the protection of the public such as, "Do Not Use For Food Or Feed Or Oil Purposes", except that the caution statement for mercurials and similarly toxic substances, as established in the rules and regulations, shall be a representation of a skull and crossbones and a statement such as, "This Seed Has Been Treated With POISON", in red letters on a background of distinctly contrasting color;

(d) A description approved by the director for the protection of the public of any process used in such treatment; and

(e) If the seed is treated with an inoculant, the year and month beyond which the inoculant, if shown in the labeling, is no longer claimed to be effective (Date of expiration);

(2) For agricultural seeds except for grass seed mixtures as provided in subdivision (5) of this section:

(a) The commonly accepted name of the kind and variety of each agricultural seed component, in excess of five percent of the whole, and the percentage by weight of each in the order of its predominance, except that if the variety of the kinds which are generally labeled as to their variety as established in the rules and regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated". When more than one component is required to be named, the word mixture, mix, mixed, or blend shall be shown conspicuously on the label. Hybrids shall be labeled as hybrids except when the pure seed contains less than seventy-five percent hybrid seed. If the percentage of the hybrid seed is equal to or greater than seventy-five percent but less than ninety-

five percent, the percentage of hybrid shall be labeled parenthetically following the variety;

(b) The lot number or other lot identification;

(c) Origin, if known. If the origin is unknown, the fact shall be stated;

(d) The percentage by weight of all weed seed;

(e) The name and rate of occurrence per pound of each kind of restricted noxious weed seed:

(i) For *Agrostis* spp., bluegrass, timothy, orchardgrass, fescue, alsike clover, white clover, reed canarygrass, ryegrass, foxtail millet, alfalfa, red clover, sweetclover, lespedeza, smooth brome, crimson clover, *Brassica* spp., flax, wheatgrass, and other agricultural seed of similar size and weight, or mixtures within such group, when present singly or collectively in excess of eighteen seeds per pound; and

(ii) For all other agricultural seed or agricultural seed mixtures not included in subdivision (i) of this subdivision, when present, label as found;

(f) Percentage by weight of agricultural seeds which may be designated as other crop seed other than those required to be named on the label;

(g) The percentage by weight of inert matter;

(h) For each named agricultural seed, the percentage of germination exclusive of hard seed and the percentage of hard seed if present. Following the percentage of germination exclusive of hard seed and the percentage of hard seed, if present, the total germination and hard seed percentage may be stated if desired. The calendar month and year the test was completed to determine such percentages or an expiration date for those seeds labeled for lawn and turf purposes shall also be stated;

(i) For each of the following named grasses the percentage of germination exclusive of dormant seed, the percentage of dormant seed if present, or the percentage of viability as indicated by a tetrazolium (TZ) test and the calendar month and year the test was completed to determine such percentages. Following the percentage of germination, exclusive of dormant seed and the percentage of dormant seed, if present, the total germination and dormant seed may be stated if desired. Also, for each of the following named grasses when extreme dormancy is encountered, the result of a tetrazolium (TZ) test may be shown in lieu of the percentage of germination to indicate the potential viability of the seed:

Bluestem:

Big

Little

Sand

Yellow

Dropseed, sand

Buffalograss

Gramma:

Sideoats

Blue

Indiangrass

Lovegrass, sand

Needlegrass, green

Prairie sandreed

Ricegrass, Indian

Wheatgrass, western

*Andropogon gerardii*

*Schizachyrium scoparium*

*Andropogon hallii*

*Bothriochloa ischaemum*

*Sporobolus cryptandrus*

*Buchloe dactyloides*

*Bouteloua curtipendula*

*Bouteloua gracilis*

*Sorghastrum nutans*

*Eragrostis trichodes*

*Stipa viridula*

*Calamovilfa longifolia*

*Oryzopsis hymenoides*

*Elymus smithii*

Switchgrass

Panicum virgatum; and

(j) The name and address of the person who labeled such seed or who sells such seed within this state;

(3) For agricultural, vegetable, and flower seeds that are coated:

(a) The percentage of pure seeds with coating material removed;

(b) The percentage of coating material should be shown as a separate item in close association with the percentage of inert matter; and

(c) The percentage of germination should be determined on four hundred pellets with or without seeds;

(4) For products which claim to be a combination of mulch, seed, and fertilizer the word combination shall be followed by the words "Mulch - Seed - Fertilizer". The word combination must appear on the upper thirty percent of the principal display panel and must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "Mulch - Seed - Fertilizer" shall be no smaller than one-half the size of, and in close proximity to, the word combination. Such product shall contain a minimum of seventy percent mulch;

(5) For seed mixtures for lawns and turf purposes in containers of fifty pounds or less:

(a) The word mixed, mixture, mix, or blend;

(b) Commonly accepted name, in order of its predominance of the kind and variety, or kind of each agricultural seed present in excess of five percent of the whole;

(c) Percentage by weight of pure seed of each agricultural seed named;

(d) For each agricultural seed named under subdivision (b) of this subdivision:

(i) Percentage of germination exclusive of hard seed;

(ii) Percentage of hard seed if present; and

(iii) Calendar month and year the test was completed to determine such percentages or an expiration date;

(e) Percentage by weight of all weed seed;

(f) Percentage by weight of all agricultural seeds, which may be designated as crop seed, other than those stated under subdivision (b) of this subdivision;

(g) Percentage by weight of inert matter;

(h) Lot number or other lot identification;

(i) The name and rate of occurrence of each kind of restricted noxious weed seed per pound when present singly or collectively in excess of the numbers shown in subdivision (2)(e)(i) of this section;

(j) Name and address of the person who labeled such seed or who sells such seed within this state;

(k) Origin, if known. If the origin is unknown, the fact shall be stated; and

(l) For cool season lawn and turf grass seed and mixtures, including kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bentgrass, and creeping bentgrass:

(i) The calendar month and year the germination test was completed to determine the percentage required under subdivision (5)(d)(i) of this section and the germination test date for each component or, if each component does not show a germination test date, the oldest germination test date shall be used for the mixture; or

(ii) In place of the test date, the statement “sell by (date)”, which date shall not be more than fifteen months after the date of the germination test exclusive of the month of the germination test;

(6) For grass seed for which claims are made regarding the beneficial presence of *Acremonium* species:

(a) The seed shall have on the analysis label or on a separate label which is in close proximity to the analysis label the actual percentage of viable endophyte present in each component and the month and year that a viable endophyte test was performed to establish the percentage of endophyte present. For mixtures, the oldest test date shall be used. The test date shall be stated as “Endophyte Test Date”. Freshly harvested seed may be labeled and shipped based on a seed endophyte test until October 1 of the harvest year; and

(b) The viable endophyte test must have been conducted within the last nine months, not including the month of the test. If the test date exceeds nine months the seed lot must be retested and relabeled or all references to endophyte must be removed from the label;

(7) For vegetable seeds in containers prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices:

(a) The name of the kind and variety of seed;

(b) Lot number or other lot identification;

(c) The calendar month and year the seeds were tested or the year for which the seed was packaged for sale as “Packed for (year)”;

(d) For seeds which germinate less than the standard last established in the rules and regulations:

(i) Percentage of germination exclusive of hard seed;

(ii) Percentage of hard seed if present;

(iii) The calendar month and year the test was completed to determine such percentages; and

(iv) The words “Below Standard” in not less than eight-point type;

(e) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or other device, a statement to indicate the minimum number of seeds in the container;

(f) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present; and

(g) The name and address of the person who labeled such seed or who sells such seed within this state;

(8) For vegetable seeds in containers other than containers prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;

(b) Lot number or other lot identification;

(c) For each named vegetable seed:

(i) The percentage of germination exclusive of hard seed;

(ii) The percentage of hard seed if present; and

(iii) The calendar month and year the test was completed to determine such percentages. Following the information prescribed in subdivisions (i) and (ii) of this subdivision, the total germination and hard seed percentage may be stated as such, if desired;

(d) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present; and

(e) Name and address of the person who labeled the seed or who sells such seed within this state;

(9) For flower seeds in containers prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices:

(a) For all kinds of flower seeds:

(i) The name of the kind and variety or a statement of type and performance characteristics as established in rules and regulations. Mixtures shall be listed on the label as mixture, mix, or mixed. Seeds described as native wildflower seeds shall only be seeds from flowers that are indigenous to North America. Seeds described as introduced wildflower seeds shall only be seeds from flowers that are not indigenous to North America;

(ii) The calendar month and year the seed was tested or the year for which the seed was packaged for sale as "Packed for (year)"; and

(iii) The name and address of the person who labeled the seed for sale within this state;

(b) For seeds of those kinds for which standard testing procedures are prescribed, such as methods published by the Association of Official Seed Analysts or other generally recognized methods, and which germinate less than the germination standard last established in the rules and regulations:

(i) Percentage of germination exclusive of hard seeds; and

(ii) The words "Below Standard" in not less than eight-point type; and

(c) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container;

(10) For flower seeds in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of the kind and variety or a statement of type and performance characteristics as established in rules and regulations. Mixtures shall be listed on the label as mixture, mixed, or mix. Seeds described as native wildflower seeds shall only be seeds from flowers that are indigenous to North America. Seeds described as introduced wildflower seeds shall only be seeds from flowers that are not indigenous to North America;

- (b) The percentage by weight of pure seed for each flower seed named;
- (c) Lot number or other lot identification;
- (d) Percentage by weight of all weed seed when present in flower seed;
- (e) Name and rate of occurrence per pound of each kind of restricted noxious weed seed, if present, listed under the heading noxious weed seeds;
- (f) The calendar month and year that the seed was tested;
- (g) The name and address of the person who labeled the seed or who sells the seed within this state; and
- (h) For those kinds of seed for which standard testing procedures are prescribed in generally recognized official methods:
  - (i) Percentage of germination exclusive of hard seed; and
  - (ii) Percentage of hard seed if present; and
- (11) For agricultural seeds sold on a pure live seed basis, as established in the rules and regulations, the information required by subdivision (2)(a) of this section, except as modified in this subdivision:
  - (a) The label need not show:
    - (i) The percentage by weight of each agricultural seed component as required by subdivision (2)(a) of this section; or
    - (ii) The percentage by weight of inert matter as required by subdivision (2)(g) of this section; and
  - (b) The label shall, instead of the information required by subdivision (2)(h) of this section or subdivision (2)(i) of this section when appropriate, show for each named agricultural seed:
    - (i) The percentage of pure live seed as established in the rules and regulations; and
    - (ii) The calendar month and year in which the test determining the percentage of pure live seed was completed.

**Source:** Laws 1969, c. 759, § 3, p. 2863; Laws 1972, LB 1290, § 1; Laws 1980, LB 633, § 4; Laws 1985, LB 460, § 14; Laws 1990, LB 37, § 2; Laws 1997, LB 263, § 3; Laws 2013, LB166, § 1.

**81-2,147.03 Sale; unlawful acts.**

- (1) It shall be unlawful for any person to sell any agricultural, vegetable, or flower seed within this state:
  - (a) Unless the test to determine the percentage of germination required in section 81-2,147.02 has been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, except that for those seeds as established in rules and regulations, the test to determine the percentage of germination shall have been completed within a twelve-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale. Seeds packaged in hermetically sealed containers under the conditions established in rules and regulations may be sold for a period of thirty-six months after the last day of the month that the seeds were tested prior to packaging. If the seeds in hermetically sealed containers are sold more than thirty-six months after the last day of the month in which they were tested prior to packaging, they shall have been retested for

germination within a nine-month period, exclusive of the calendar month in which the retest was completed, immediately prior to their sale;

(b) Not labeled in accordance with the provisions of the Nebraska Seed Law or having a false and misleading labeling. In case agricultural seed is sold in bulk or sold from bulk, the information required under section 81-2,147.02 may be supplied by a printed or written statement to be furnished to any purchaser of such seed;

(c) Pertaining to which there has been a false or misleading advertisement, statement, invoice, or declaration;

(d) Consisting of or containing primary noxious weed seeds;

(e) Consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;

(f) Consisting of or containing restricted noxious weed seeds per pound in excess of the number declared on the label attached to the container of the seed or associated with the seed, subject to recognized tolerances. The recognized tolerances shall not exceed one-half of one percent by weight;

(g) Containing more than two percent by weight of all weed seed other than primary noxious weed seed, prohibited noxious weed seed, and restricted noxious weed seed. This subdivision does not apply to agricultural, vegetable, or flower seeds specifically allowed in the rules and regulations to contain four percent or less by weight of weed seed;

(h) If any labeling, advertising, or other representation subject to the Nebraska Seed Law represents the seed to be certified or registered seed unless (i) it has been determined by a certifying agency that such seed was produced, conditioned, and packaged and conforms to standards of purity as to kind or kind and variety in compliance with rules and regulations of such agency pertaining to such seed and (ii) the seed bears an official label issued for such seed by a certifying agency stating that the seed is certified or registered; and

(i) For reproductive purposes which is not certified by an official certifying agency when it is a variety for which an application has been made or accepted or a certificate of plant variety protection is issued under the federal Plant Variety Protection Act specifying sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by or with the approval of the owner of the variety.

(2) It shall be unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label provided for in the Nebraska Seed Law or established in the rules and regulations adopted and promulgated under such law or to alter or substitute seed in a manner that may defeat the purpose of such law;

(b) To disseminate any false or misleading advertisements concerning agricultural, vegetable, or flower seeds in any manner or by any means;

(c) To hinder or obstruct in any way any authorized person in the performance of his or her duties under the Nebraska Seed Law;

(d) To fail to comply with a stop-sale order or to move or otherwise handle or dispose of any lot of seed held under a stop-sale order or tags attached thereto, except with written permission of the enforcing officer and for the purpose specified thereby;

(e) To sell screenings if they contain any seed of primary, prohibited, or restricted noxious weeds unless they have been conditioned to destroy the viability of such seed;

(f) To use the word trace as a substitute for any statement which is required;

(g) To use the word type in any labeling in connection with the name of any agricultural seed variety;

(h) To plant seed which the person knows contains a prohibited noxious weed seed in excess of the recognized tolerances utilized in subdivision (1)(e) of this section or contains primary noxious weed seed; or

(i) To alter or falsify any seed label, seed test, laboratory report, record, or other document in a manner which creates a false or misleading impression as to kind, variety, history, quality, or origin of the seed.

(3) All seed sold shall be labeled on the basis of tests performed by a seed laboratory using Rules for Testing Seeds adopted by the Association of Official Seed Analysts as of January 1, 2012.

**Source:** Laws 1969, c. 759, § 4, p. 2869; Laws 1973, LB 263, § 1; Laws 1980, LB 633, § 5; Laws 1985, LB 460, § 15; Laws 1990, LB 37, § 3; Laws 1997, LB 263, § 4; Laws 2012, LB770, § 2.

#### **81-2,147.04 Records; samples; subject to inspection.**

Each person whose name appears on the label as handling agricultural, vegetable, or flower seeds subject to the Nebraska Seed Law shall keep for a period of three years complete records of each lot of agricultural, vegetable, or flower seed handled and keep for one year a file sample of each lot of seed after final disposition of the lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the director during customary business hours.

**Source:** Laws 1969, c. 759, § 5, p. 2871; Laws 1985, LB 460, § 16; Laws 1990, LB 37, § 4.

#### **81-2,147.05 Exempt seed or grain.**

(1) Sections 81-2,147.02 and 81-2,147.03 shall not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage in, or being transported or consigned to, a cleaning or conditioning establishment for cleaning or conditioning, except that the invoice or labeling accompanying any shipment of such seed shall bear the statement Seed for Conditioning, and any labeling or other representation which may be made with respect to the uncleaned unconditioned seed shall be subject to the Nebraska Seed Law; or

(c) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if such carrier is not engaged in producing, conditioning, or marketing agricultural, vegetable, or flower seeds subject to the Nebraska Seed Law.

(2) No person shall be subject to the penalties of the Nebraska Seed Law for having sold agricultural, vegetable, or flower seed which was incorrectly labeled or represented as to kind, variety, or origin, if required, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information

and to take such other precautions as may be reasonable to insure the identity to be as stated.

**Source:** Laws 1969, c. 759, § 6, p. 2871; Laws 1985, LB 460, § 17; Laws 1990, LB 37, § 5.

**81-2,147.06 Director; powers and duties.**

(1) The duty of enforcing the Nebraska Seed Law and carrying out such law and requirements shall be vested in the director. It shall be the duty of the director:

(a) To sample, inspect, make analysis of, and test agricultural, vegetable, and flower seed sold within this state for sowing purposes at such time and place and to such extent as he or she may deem necessary to determine whether such agricultural, vegetable, or flower seed is in compliance with the Nebraska Seed Law and to notify promptly the persons who sold the seed of any violation;

(b) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act as are specifically authorized in the Nebraska Seed Law governing the method of sampling, inspecting, analyzing, testing, and examining agricultural, vegetable, and flower seed and the tolerances to be followed in the administration of the law, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement and full intent of such law;

(c) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act adding to or subtracting from the primary noxious weed seeds list, the prohibited noxious weed seeds list, and the restricted noxious weed seeds list, as defined in section 81-2,147.01, whenever the director finds that a noxious weed seed should or should not be within one of these lists;

(d) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act establishing reasonable standards of germination for agricultural, vegetable, and flower seed; and

(e) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act to establish, add to, or subtract from the seeds listed in subdivision (2)(i) of section 81-2,147.02 and for which the tetrazolium (TZ) test may be employed as the official test to indicate the potential viability of the seed.

(2) For the purpose of carrying out the law, the director may:

(a) Enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected with such seeds subject to the law and the rules and regulations adopted and promulgated under such law and enter any truck or other conveyor by land, water, or air at any time when the conveyor is accessible for the same purpose;

(b) Issue and enforce a written or printed stop-sale order to the owner or custodian of any lot of agricultural, vegetable, or flower seed which the director finds is in violation of any of the provisions of the law or rules and regulations adopted and promulgated under such law, which order shall prohibit further sale, conditioning, and movement of such seed, except on approval of the enforcing officer, until such officer has evidence that the law has been complied with and he or she has issued a release from the stop-sale order of such seed.

With respect to seed which has been denied sale, conditioning, or movement as provided in this subdivision, the owner or custodian of such seed shall have the right to appeal from such order in accordance with the Administrative Procedure Act, praying for a judgment as to the justification of such order and for the discharge of such seed from the order prohibiting the sale, conditioning, or movement in accordance with the findings of the court. This subdivision shall not be construed as limiting the right of the director to proceed as authorized by other sections of the law;

(c) Establish and maintain or make provision for seed-testing facilities, employ qualified persons, and incur such expenses as may be necessary to comply with the law or rules and regulations adopted and promulgated under the law;

(d) Make or provide for making purity, weed seed, tetrazolium (TZ), germination, and other tests of seed as established in rules and regulations and recommended by rule of the Association of Official Seed Analysts for persons on request, adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act governing such testing, and fix and collect charges for the tests made, which charges shall not exceed the cost of such tests. All fees shall be remitted to the state treasury and by the State Treasurer placed in the Nebraska Seed Administrative Cash Fund;

(e) Cooperate with the United States Department of Agriculture and other agencies in seed law enforcement; and

(f) Cooperate and enter into agreements with any person necessary to carry out the purpose of the law.

**Source:** Laws 1969, c. 759, § 7, p. 2872; Laws 1985, LB 460, § 19; Laws 1988, LB 352, § 166; Laws 1990, LB 37, § 6; Laws 1997, LB 263, § 5.

#### Cross References

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

### **81-2,147.07 Seeds not in compliance with law; remedies; procedure.**

(1) Any lot of agricultural, vegetable, or flower seed not in compliance with the Nebraska Seed Law shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of such law and orders the condemnation thereof, it shall be denatured, conditioned, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state, except that in no instance shall the court order such disposition of the seed without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it to bring it into compliance with such law.

(2) It shall be the duty of the county attorney of the county in which the seed is located or the Attorney General when notified by the Department of Agriculture of such need for seizure to institute appropriate proceedings without delay.

**Source:** Laws 1969, c. 759, § 8, p. 2874; Laws 1985, LB 460, § 20; Laws 1990, LB 37, § 7.

**81-2,147.08 Restraining order or injunction; application by director; issued without bond.**

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 any of the provisions of the Nebraska Seed Law or any rules or regulations adopted and promulgated under such law. The district court of the county in which the violations have occurred, are occurring, or are 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.

**Source:** Laws 1969, c. 759, § 9, p. 2874; Laws 1985, LB 460, § 21; Laws 1990, LB 37, § 8.

**81-2,147.09 Violations; penalty; hearing; enforcement.**

Any person violating the Nebraska Seed Law shall be guilty of a Class IV misdemeanor.

It shall be the duty of the county attorney of the county in which any violation has occurred, is occurring, or is about to occur or the Attorney General when notified by the Department of Agriculture of a violation or a threatened violation to institute appropriate proceedings, either criminal or injunctive, or both, without delay. Before the director reports a violation, an opportunity shall be given to the person against whom proceedings will be brought to present such person's views to the director at a hearing held pursuant to the Administrative Procedure Act.

If after such hearing or without such hearing, in case the defendant or his or her agent or attorney fails or refuses to appear, the director is of the opinion that the evidence warrants prosecution, he or she shall proceed as provided in this section. The county attorney or the Attorney General, as the case may be, shall institute proceedings at once against any person charged with a violation of the Nebraska Seed Law, if in the judgment of the director the information submitted warrants such action.

After judgment by the court in any case arising under such law, the director shall publish any information pertinent to the issuance of the judgment by the court in such media as he or she may designate from time to time.

**Source:** Laws 1969, c. 759, § 10, p. 2874; Laws 1977, LB 39, § 280; Laws 1985, LB 460, § 22; Laws 1990, LB 37, § 9.

**Cross References**

Administrative Procedure Act, see section 84-920.

**81-2,147.10 Sale of labeled seeds; permit required; fees; renewal; exceptions; refusal or cancellation of permit; hearing.**

(1) No person who labels for sale in Nebraska agricultural, vegetable, or flower seeds shall sell such seeds in Nebraska unless he or she holds a valid seed permit. Application for the permit shall be made to the Department of Agriculture on forms prescribed and furnished by the department. If the applicant is an individual, the application for a permit shall include the applicant's social security number. Application forms shall be submitted to the department accompanied by an annual registration fee based on the number of pounds of agricultural, vegetable, or flower seed the applicant labeled and sold during the preceding calendar year. Registrations shall be renewed on or before January 1 of each year. If a person fails to renew the registration by January 31

of each year, such person shall also be required to pay a delinquency fee of twenty percent per month of the amount of the fee due, not to exceed one hundred percent of the annual registration fee.

The annual registration fee shall be:

Fee:	Applicant sold:
Twenty-five dollars	Less than ten thousand pounds of agricultural seed (other than lawn and turf seed);
Fifty dollars	Ten thousand or more pounds of agricultural seed (other than lawn and turf seed) and less than two hundred fifty thousand pounds of any kind of seed;
One hundred dollars	Two hundred fifty thousand or more pounds and less than five hundred thousand pounds of seeds;
Two hundred fifty dollars	Five hundred thousand or more pounds and less than one million pounds of seeds;
Three hundred fifty dollars	One million or more pounds and less than five million pounds of seeds;
Seven hundred fifty dollars	Five million or more pounds of seeds.

(2) Subsection (1) of this section shall not apply if the agricultural, vegetable, or flower seeds being labeled and sold are of the breeder or foundation seed classes of varieties developed by publicly financed research agencies intended for the purpose of increasing the quantity of seed available.

(3) The director shall refuse to issue a permit when the application for such permit is not in compliance with the Nebraska Seed Law or any rules and regulations adopted and promulgated pursuant to such law and may cancel any permit when it is subsequently found to be in violation of any provision of such law, rule, or regulation or when the director has satisfactory evidence that the person has used fraudulent or deceptive practices in an attempted evasion of the law, rule, or regulation, except that no permit shall be refused or canceled until the person shall have been given an opportunity to be heard before the director.

**Source:** Laws 1985, LB 460, § 13; Laws 1990, LB 37, § 10; Laws 1997, LB 263, § 6; Laws 1997, LB 752, § 217.

**81-2,147.11 Nebraska Seed Administrative Cash Fund; created; use; investment.**

There is hereby created a fund to be known as the Nebraska Seed Administrative Cash Fund. All money received pursuant to the Nebraska Seed Law shall be remitted to the State Treasurer for credit to such fund. All money credited to the fund shall be used by the Department of Agriculture to aid in defraying the cost of administering such law, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Seed Administrative 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 1985, LB 460, § 18; Laws 1995, LB 7, § 98; Laws 2009, First Spec. Sess., LB3, § 63.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-2,147.12 Preemption of local law.**

The Nebraska Seed Law and any rules and regulations adopted and promulgated thereunder shall supersede and preempt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of seeds. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of seeds based upon the type, nature, or genetic makeup of such seeds. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, sale, storage, transportation, distribution, notification of use, planting, or cultivation of seeds that is in addition to or in conflict with the Nebraska Seed Law and any rules and regulations adopted and promulgated thereunder. Nothing in this section shall be construed to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations.

**Source:** Laws 2009, LB263, § 1.

**81-2,148 Repealed. Laws 1945, c. 237, § 14.****81-2,149 State-certified seeds; plant parts; approval of standards; certification, defined.**

Every person, firm, association, or corporation who or which issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description of or pertaining to seeds or plant parts intended for propagation or sale or sold or offered for sale in which the words Nebraska State Certified, State Certified, Nebraska Certified, or similar words or phrases are used or employed or in which are used or employed, signs, symbols, maps, diagrams, pictures, words, or phrases expressly or impliedly stating or representing that such seeds or plant parts comply with or conform to the standards or requirements recommended or approved by the University of Nebraska Institute of Agriculture and Natural Resources or by any department, office, agency, or institution of the State of Nebraska shall be subject to the provisions of sections 81-2,149 to 81-2,154. Every issuance, use, or circulation of any certificate or any other instrument as described in this section shall be deemed to be certification as that term is employed in such sections.

**Source:** Laws 1931, c. 151, § 1, p. 409; C.S.Supp.,1941, § 81-1816; R.S.1943, § 81-2,149; Laws 1991, LB 663, § 53.

**81-2,150 State-certified seeds; dealers; observance of rules of University of Nebraska Institute of Agriculture and Natural Resources required.**

Every person, firm, association, or corporation subject to the provisions of sections 81-2,149 to 81-2,154 shall observe, perform, and comply with all rules, regulations, and requirements fixed, established, or specified by the University of Nebraska Institute of Agriculture and Natural Resources as to what crops grown or to be grown in Nebraska shall be eligible for certification, either by the institute directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements, and forms of and for certification under

such sections, except that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provisions of such sections, shall be made or authorized except by or through the institute.

**Source:** Laws 1931, c. 151, § 2, p. 409; C.S.Supp.,1941, § 81-1817; R.S.1943, § 81-2,150; Laws 1991, LB 663, § 54.

**81-2,151 State-certified seeds; certification agencies; nonprofit basis.**

Certification work, whether conducted by the University of Nebraska Institute of Agriculture and Natural Resources or by any agency designated by it, shall be on a self-supporting basis and not for financial profit. The institute may designate as the agency for the certification of seed potatoes a nonstock, nonprofit cooperative association engaged in the marketing of such potatoes under exclusive marketing agreements with its growers.

**Source:** Laws 1931, c. 151, § 3, p. 409; C.S.Supp.,1941, § 81-1818; R.S.1943, § 81-2,151; Laws 1991, LB 663, § 55.

**81-2,152 State-certified seeds; certification agencies; legal obligations; University of Nebraska Institute of Agriculture and Natural Resources not liable.**

The University of Nebraska Institute of Agriculture and Natural Resources shall not be financially responsible for debts incurred by, damages inflicted by, or contracts broken by certifying agencies in conducting certification work.

**Source:** Laws 1931, c. 151, § 4, p. 410; C.S.Supp.,1941, § 81-1819; R.S.1943, § 81-2,152; Laws 1991, LB 663, § 56.

**81-2,153 State-certified seeds; growers; violations; dishonest practices; certification may be withheld.**

The University of Nebraska Institute of Agriculture and Natural Resources or its designated agency or agencies may withhold certification, for a period not to exceed two years, from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of sections 81-2,149 to 81-2,154, including standards, rules, and regulations laid down by the institute to cover certification.

**Source:** Laws 1931, c. 151, § 5, p. 410; C.S.Supp.,1941, § 81-1820; R.S.1943, § 81-2,153; Laws 1991, LB 663, § 57.

**81-2,154 State-certified seeds; violations; penalty.**

It shall be unlawful for any person, firm, association, or corporation to issue, make, use, or circulate any certification as defined in section 81-2,149 without the authority and approval of the University of Nebraska Institute of Agriculture and Natural Resources or its duly authorized agency. Every person, firm, association, or corporation who violates any of the provisions of sections 81-2,149 to 81-2,154 pertaining to certification shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1931, c. 151, § 6, p. 410; C.S.Supp.,1941, § 81-1821; R.S.1943, § 81-2,154; Laws 1977, LB 39, § 281; Laws 1991, LB 663, § 58.

**81-2,155 Hybrid seed corn, defined; sale; practices forbidden.**

It shall be unlawful for any person, firm, corporation or its agents or representatives to sell, offer or expose for sale, or falsely mark or tag, within the State of Nebraska, any seed corn as hybrid unless it answers to the following definition: Hybrid seed corn shall be seed of the first generation of a cross involving two, three or four different inbred lines of corn or their combinations, and shall be restricted to seed of single crosses, three-way crosses, and double crosses, these in turn being defined as follows:

- (1) Single cross: The first generation of a hybrid between two inbred lines;
- (2) Three-way cross: The first generation of a hybrid between a single cross and an inbred line;
- (3) Double cross: The first generation of a hybrid between two single crosses.

**Source:** Laws 1937, c. 4, § 1, p. 56; C.S.Supp.,1941, § 81-1823; R.S.1943, § 81-2,155.

**81-2,156 Hybrid seed corn; cross, defined.**

The cross mentioned in section 81-2,155 shall be produced by cross fertilization, controlled either by hand or by detasseling under isolation at the proper time.

**Source:** Laws 1937, c. 4, § 2, p. 56; C.S.Supp.,1941, § 81-1824; R.S.1943, § 81-2,156.

**81-2,157 Hybrid seed corn; violations; penalty.**

Every violation of the provisions of sections 81-2,155 and 81-2,156 shall be a Class III misdemeanor. The Department of Agriculture, through its duly authorized agent or agents, shall report violations of said sections to the proper county attorney or to the Attorney General for prosecution.

**Source:** Laws 1937, c. 4, § 3, p. 56; C.S.Supp.,1941, § 81-1825; R.S.1943, § 81-2,157; Laws 1977, LB 39, § 282.

(n) COMMERCIAL FERTILIZER AND SOIL CONDITIONER

**81-2,158 Repealed. Laws 1955, c. 334, § 23.**

**81-2,159 Repealed. Laws 1955, c. 334, § 23.**

**81-2,160 Repealed. Laws 1955, c. 334, § 23.**

**81-2,161 Repealed. Laws 1955, c. 334, § 23.**

**81-2,161.01 Repealed. Laws 1955, c. 334, § 23.**

**81-2,161.02 Repealed. Laws 1955, c. 334, § 23.**

**81-2,162 Repealed. Laws 1955, c. 334, § 23.**

**81-2,162.01 Act; administration.**

The Nebraska Commercial Fertilizer and Soil Conditioner Act shall be administered by the Director of Agriculture.

**Source:** Laws 1955, c. 334, § 1, p. 1037; Laws 1975, LB 333, § 1; Laws 1987, LB 201, § 3.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuzer, 204 Neb. 220, 281 N.W.2d 762 (1979).

### **81-2,162.02 Terms, defined.**

For purposes of the Nebraska Commercial Fertilizer and Soil Conditioner Act, unless the context otherwise requires:

(1) Director shall mean the Director of Agriculture or his or her duly authorized agent;

(2) Department shall mean the Department of Agriculture;

(3) Commercial fertilizer shall mean any formula or product distributed for further distribution or ultimate use as a plant nutrient, intended to promote plant growth, containing one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication. The term commercial fertilizer shall not be deemed to include unmanipulated animal and vegetable manures but shall be deemed to include both finished products and fertilizer ingredients capable of being used in the formulation of a finished product;

(4) Bulk shall mean nonpackaged;

(5) Custom-blended product shall mean any individually compounded commercial fertilizer or soil conditioner mixed, blended, offered for sale, or sold in Nebraska to a person’s specifications, when such person is the ultimate consumer, if the ingredients used in such product which are subject to the registration requirements of section 81-2,162.03 have been so registered;

(6) Distribute shall mean to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil conditioners;

(7) Fineness shall mean the percentage of weight of the material which will pass United States standard sieves of specified sizes;

(8) Label shall mean a display of written, printed, or other graphic matter upon the container in which a commercial fertilizer or soil conditioner is distributed, or a statement accompanying such product;

(9) Labeling shall mean the label and all other written, printed, or graphic matter accompanying the commercial fertilizer or soil conditioner at any time or to which reference is made on the label;

(10) Official sample shall mean any sample of commercial fertilizer or soil conditioner taken by the director or his or her agent;

(11) Product shall mean both commercial fertilizers and soil conditioners;

(12) Ton shall mean a net weight of two thousand pounds avoirdupois;

(13) Percent or percentage shall mean the percentage by weight;

(14) Person shall include individual, cooperative, partnership, limited liability company, association, firm, and corporation;

(15) Sell or sale shall include exchange;

(16) Soil conditioner shall mean any formula or product distributed, except unmanipulated animal and vegetable manures, which, when added to the soil, is intended to (a) change the physical condition of the soil or (b) produce a favorable growth, yield, or quality of crops or other soil characteristics but shall not mean a commercial fertilizer or agricultural liming material; and

(17) Specialty product shall mean a product for nonfarm use.

**Source:** Laws 1955, c. 334, § 2, p. 1037; Laws 1959, c. 429, § 1, p. 1434; Laws 1975, LB 333, § 2; Laws 1977, LB 91, § 2; Laws 1978, LB 692, § 1; Laws 1980, LB 889, § 1; Laws 1992, LB 366, § 26; Laws 1993, LB 121, § 525.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuzer, 204 Neb. 220, 281 N.W.2d 762 (1979).

**81-2,162.03 Soil conditioner; registration; expiration; application; contents; custom-blended products exempt; information required.**

(1) Each soil conditioner shall be registered before being distributed in this state. The distributor who first causes the distribution of the product into or within this state shall be responsible for compliance with the product registration requirements of this section. The application for registration shall be submitted to the director on forms furnished by the director and shall be accompanied by two copies of the labeling for such product. Upon approval by the director, a copy of the registration shall be furnished to the applicant. All registrations shall expire on December 31 of each year. The application shall include the following information:

- (a) The name and principal address of the person registering the product;
- (b) The name and principal address of the person guaranteeing the product, if different than the registrant;
- (c) The name and principal address of the person manufacturing the product, if different than the registrant;
- (d) The name and principal address of the person whose name appears on the label, if different than the registrant;
- (e) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product; and
- (f) The percentage of every ingredient present in each soil conditioner.

(2) Custom-blended products shall be exempt from the requirements of this section, except that such products shall bear a tag or invoice stating the name and principal address of the manufacturer, the name and address of the purchaser, and the net weight or measure and the composition of the product by weight or percentage of ingredients used, and a duplicate copy of such information shall be kept by the manufacturer for use by the department for sampling and inspection purposes. All ingredients shall be subject to the inspection fee requirements of section 81-2,162.06 except those ingredients brought to the manufacturer by the ultimate user for custom blending.

(3) A product shall not be required to be registered under this section when the director knows, or has reason to know, that such product is currently registered pursuant to this section. The director shall consider two or more products to be the same product only if the characteristics of the products described under subdivisions (b) through (f) of subsection (1) of this section are the same.

**Source:** Laws 1955, c. 334, § 3, p. 1038; Laws 1969, c. 791, § 1, p. 2995; Laws 1975, LB 333, § 4; Laws 1980, LB 889, § 2; Laws 1992, LB 366, § 27.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuzer, 204 Neb. 220, 281 N.W.2d 762 (1979).

**81-2,162.04 Soil conditioner; label; contents; bulk; statement; common name; pesticide; how labeled.**

(1) Any packaged soil conditioner distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously (a) the net weight or measure of the product, (b) the information required by subdivisions (1)(c) and (d) of section 81-2,162.03, (c) the total percentage of the active ingredients in the soil conditioner, (d) the identification and percentage of each individual active ingredient, (e) the total percentage of the inactive ingredients, (f) the identification and percentage of each individual inactive ingredient which comprises more than two percent of the entire soil conditioner, and (g) under a category entitled other inactive ingredients, the total percentage of the remaining inactive ingredients which individually do not comprise two percent or more of the soil conditioner.

(2) If any soil conditioner is distributed in bulk, a written or printed statement of the weight and the information required by subdivisions (1)(c) and (d) of section 81-2,162.03 and by subdivisions (1)(c) through (g) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a soil conditioner is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Notwithstanding any other provision of the Nebraska Commercial Fertilizer and Soil Conditioner Act, any soil conditioner which is also a pesticide, labeled in conformance with the Pesticide Act, shall be deemed to be labeled in conformance with the Nebraska Commercial Fertilizer and Soil Conditioner Act.

**Source:** Laws 1978, LB 692, § 3; Laws 1987, LB 24, § 1; Laws 1987, LB 201, § 4; Laws 1993, LB 588, § 37.

**Cross References**

**Pesticide Act**, see section 2-2622.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuzer, 204 Neb. 220, 281 N.W.2d 762 (1979).

**81-2,162.05 Commercial fertilizer; label affixed to package; contents; common name; custom-blended products; requirements.**

(1) Any packaged commercial fertilizer distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously:

- (a) The net weight or measure of the product;
- (b) The name and principal address of the manufacturer or distributor;
- (c) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product;
- (d) The guaranteed analysis showing the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen ..... percent

Ammoniacal Nitrogen

(Specialty products only) ..... percent

Nitrate Nitrogen

(Specialty products only) ..... percent

Water Insoluble Nitrogen

(Specialty products only) ..... percent

Available Phosphoric Acid (P2O5) ..... percent

Soluble Potash (K2O) ..... percent

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total phosphoric acid and the degree of fineness. Plant nutrients, other than nitrogen, phosphorus, and potassium, shall be guaranteed when present in significant quantities as determined by the director, which guarantees shall be expressed in elemental form. The director may also request that the sources of such nutrients be included on the label. Other beneficial substances, determinable by chemical methods, may be guaranteed only by permission of the director by and with the advice of the University of Nebraska Institute of Agriculture and Natural Resources. The director may permit or require the potential basicity or acidity, expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, to be guaranteed; and

(e) The sources from which the nitrogen, phosphoric acid (P2O5), and potash (K2O) are derived.

(2) If distributed in bulk, a written or printed statement of the information required by subdivisions (a), (b), (c), and (d) of subsection (1) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a commercial fertilizer is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Custom-blended products shall bear a tag or invoice stating the name and principal address of the manufacturer, the name and address of the purchaser, and the net weight or measure and the composition of the product by weight or percentage of ingredients used. A duplicate copy of such information shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

**Source:** Laws 1955, c. 334, § 5, p. 1040; Laws 1975, LB 333, § 5; Laws 1978, LB 692, § 2; Laws 1980, LB 889, § 3; Laws 1992, LB 366, § 28.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuzscher, 204 Neb. 220, 281 N.W.2d 762 (1979).

**81-2,162.06 Commercial fertilizer and soil conditioner; inspection fee; amount; tonnage report; penalty; confidential information.**

(1) There shall be paid to the director, for all commercial fertilizers and soil conditioners distributed in this state to the ultimate user, except custom-blended products, an inspection fee at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be paid by the person distributing the product to the ultimate user.

(2) Payment of the inspection fee shall be evidenced by a statement made with documents showing that fees corresponding to the tonnage were received by the director.

(3) Every person who distributes commercial fertilizer or soil conditioners to the ultimate user in this state shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department setting forth the number of net tons of commercial fertilizer and soil conditioners distributed in this state during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Nebraska Commercial Fertilizer and Soil Conditioner Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to subsection (1) of this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product.

(4) If a person fails to report and pay the fee required by subsection (3) of this section by January 31 and July 31, he or she may be required by the department to pay a penalty of up to twenty-five percent in addition to the fee due if paid during the period of February 1 to February 28 or August 1 to August 31 for the respective delinquency and an additional twenty-five percent penalty thereafter. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations, licenses, or both on file for such person.

(5) No information furnished to the department under this section shall be disclosed in such a way as to reveal the operation of any person.

**Source:** Laws 1955, c. 334, § 6, p. 1041; Laws 1965, c. 8, § 47, p. 117; Laws 1969, c. 791, § 2, p. 2996; Laws 1975, LB 333, § 6; Laws 1977, LB 91, § 3; Laws 1980, LB 889, § 4; Laws 1989, LB 38, § 7; Laws 1992, LB 366, § 29.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuscher, 204 Neb. 220, 281 N.W.2d 762 (1979).

**81-2,162.07 Enforcement of act; inspections; testing; methods of analysis; results; distribution.**

(1) To enforce the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial fertilizers and soil conditioners are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to

this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of commercial fertilizers and soil conditioners, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial fertilizers and soil conditioners. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial fertilizers and soil conditioners are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The director, in determining for administrative purposes whether any product is deficient in plant nutrients, shall be guided solely by the official sample as defined in subdivision (10) of section 81-2,162.02 and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of any official sample shall be forwarded by the director to the person named on the label when the official sample is not in compliance with the act or the rules and regulations adopted pursuant to the act. Upon request made within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the official sample. Following expiration of the ninety-day period, the director may dispose of such sample.

**Source:** Laws 1955, c. 334, § 7, p. 1041; Laws 1969, c. 791, § 3, p. 2997; Laws 1975, LB 333, § 8; Laws 1980, LB 889, § 5; Laws 1992, LB 366, § 30; Laws 1993, LB 267, § 27.

“Product” under sections 81-2,162.01 to 81-2,162.07, R.R.S. 1943, means the product which is sold in the normal course of business to the ultimate consumer, and consists of the finished product. “Manufacture” means manufacture of the finished

product. “Distributes” means distribution of the finished product, and not a mere ingredient. PPG Industries Canada LTD v. Kreuscher, 204 Neb. 220, 281 N.W.2d 762 (1979).

### **81-2,162.08 Commercial fertilizer; superphosphate; requirements.**

No superphosphate containing less than eighteen percent available phosphoric acid nor any commercial fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble potash totals less than twenty percent shall be distributed in this state except for fertilizers containing twenty-five percent or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid, and soluble potash shall not total less than eighteen percent. This section shall not apply to specialty fertilizers.

**Source:** Laws 1955, c. 334, § 8, p. 1042; Laws 1975, LB 333, § 9.

### **81-2,162.09 Repealed. Laws 1975, LB 333, § 25.**

**81-2,162.10 Repealed. Laws 1975, LB 333, § 25.****81-2,162.11 Commercial fertilizer and soil conditioner; sales information; director publish; contents.**

The director shall publish at least annually, in such forms as he or she may deem proper, information concerning the sales of commercial fertilizers and soil conditioners, together with such data on their production and use as he or she may consider advisable, and a report of the results of the analysis based on official samples of commercial fertilizers and soil conditioners distributed within the state as compared with the analyses guaranteed under the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act.

**Source:** Laws 1955, c. 334, § 11, p. 1043; Laws 1975, LB 333, § 12; Laws, 1992, LB 366, § 31.

**81-2,162.12 Commercial fertilizers and soil conditioners; rules and regulations.**

For the enforcement of the Nebraska Commercial Fertilizer and Soil Conditioner Act, the director is authorized to prescribe rules and regulations, after public hearing following due public notice, relating to the distribution of commercial fertilizers and soil conditioners as he or she may find necessary to carry into effect the full intent and meaning of the act.

**Source:** Laws 1955, c. 334, § 12, p. 1044; Laws 1975, LB 333, § 13; Laws 1992, LB 366, § 32.

**81-2,162.13 Commercial fertilizer or soil conditioner; registration or license; cancellation; reasons; hearing.**

The director is authorized and empowered to cancel the registration or license of any person manufacturing or distributing any commercial fertilizer or soil conditioner or to refuse to register any soil conditioner upon satisfactory evidence that the registrant, licensee, or guarantor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act or any rules and regulations promulgated thereunder. No license or registration shall be revoked or refused until the registrant, licensee, or guarantor has been given the opportunity to appear for a hearing before the director.

**Source:** Laws 1955, c. 334, § 13, p. 1044; Laws 1975, LB 333, § 14; Laws 1980, LB 889, § 6; Laws 1992, LB 366, § 33.

**81-2,162.14 Commercial fertilizer or soil conditioner; stop-sale, stop-use, or removal order; effect; release, when.**

The director may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of commercial fertilizer or soil conditioner and may require the owner or custodian to hold any lot at a designated place when the director has reason to believe the product is being offered or exposed for sale in violation of any of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act until the law has been complied with and such product is released in writing by the director or the violation has been otherwise legally disposed of by written authority. The director shall release the product so withdrawn when the requirements of the act have been

complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

**Source:** Laws 1955, c. 334, § 14, p. 1044; Laws 1975, LB 333, § 15; Laws 1988, LB 871, § 28.

**81-2,162.15 Commercial fertilizer or soil conditioner; noncompliance; condemnation; court order; opportunity to comply.**

Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which such product is located. In the event the court finds such product to be in violation of the provisions of such act and orders the condemnation of such product, it shall be disposed of in any manner consistent with the quality of the product and the laws of the state. In no instance shall the disposition of such product be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such product or for permission to process or relabel such product to bring it into compliance with the provisions of the act.

**Source:** Laws 1955, c. 334, § 15, p. 1044; Laws 1975, LB 333, § 16; Laws 1992, LB 366, § 34.

**81-2,162.16 Commercial fertilizer or soil conditioner; rules and regulations; violation; notice; hearing; certification to county attorney or Attorney General.**

If it shall appear from the examination of any commercial fertilizer or soil conditioner that any of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations issued thereunder have been violated, the director shall cause notice of the violations to be given to the person from whom the sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the director. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of the act or rules and regulations issued thereunder have been violated, the director may certify the facts to the county attorney of the county in which the violation occurred or to the Attorney General, as the case may be.

**Source:** Laws 1955, c. 334, § 16, p. 1045; Laws 1975, LB 333, § 17; Laws 1992, LB 366, § 35.

**81-2,162.17 Commercial fertilizer or soil conditioner; act; violations; penalty.**

Any person violating any provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations issued thereunder, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the director in the performance of his or her duty pursuant to the act, shall be guilty of a Class II misdemeanor.

**Source:** Laws 1955, c. 334, § 17, p. 1045; Laws 1975, LB 333, § 18; Laws 1977, LB 39, § 283; Laws 1992, LB 366, § 36.

**81-2,162.18 Commercial fertilizer or soil conditioner; unlawful practices; director; waiver, when.**

Nothing in the Nebraska Commercial Fertilizer and Soil Conditioner Act shall be construed as requiring the director to report for prosecution or for the institution of seizure proceedings for minor violations of such act when he or she believes that the public interest will be best served by a suitable notice of warning in writing.

**Source:** Laws 1955, c. 334, § 18, p. 1045; Laws 1975, LB 333, § 19; Laws 1992, LB 366, § 37.

**81-2,162.19 Commercial fertilizer or soil conditioner; Attorney General; county attorney; duties.**

It shall be the duty of each county attorney or the Attorney General, as the case may be, to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

**Source:** Laws 1955, c. 334, § 19, p. 1046.

**81-2,162.20 Commercial fertilizer or soil conditioner; injunction; director; application; no bond required.**

The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act, or any rules or regulations promulgated under the act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

**Source:** Laws 1955, c. 334, § 20, p. 1046; Laws 1975, LB 333, § 20; Laws 1992, LB 366, § 38.

**81-2,162.21 Commercial fertilizer or soil conditioner; sales or exchanges; restriction or avoidance; exception.**

Nothing in the Nebraska Commercial Fertilizer and Soil Conditioner Act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix commercial fertilizers or soil conditioners for sale or as preventing the free and unrestricted shipments of commercial fertilizers and soil conditioners to manufacturers or manipulators who have met the provisions of the act.

**Source:** Laws 1955, c. 334, § 21, p. 1046; Laws 1975, LB 333, § 21; Laws 1992, LB 366, § 39.

**81-2,162.22 Act, how cited.**

Sections 81-2,162.01 to 81-2,162.28 shall be known and may be cited as the Nebraska Commercial Fertilizer and Soil Conditioner Act.

**Source:** Laws 1955, c. 334, § 22, p. 1046; Laws 1975, LB 333, § 23; Laws 1987, LB 201, § 5; Laws 2009, LB263, § 4.

**81-2,162.23 Manufacture or distribution of commercial fertilizers or soil conditioners; license required; exception; application; fee; posting of license; records; contents.**

(1) No person shall manufacture or distribute commercial fertilizers or soil conditioners in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial fertilizer or soil conditioners in the State of Nebraska.

(2) An applicant for a license shall make application to the department on forms furnished by the department. If the applicant is an individual, the application shall include the applicant's social security number. Application forms shall be submitted to the department accompanied by an annual license fee of fifteen dollars. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) Persons distributing custom-blended products shall maintain records of purchase orders received for custom-blended products from the date such orders are received until such products are distributed, which records shall be sufficient to show the product ordered, date of such order, purchaser, and quantity of product ordered.

(5) The provisions of this section shall not apply to any retail store which sells or offers for sale less than a five-ton volume of commercial fertilizer or soil conditioners annually.

**Source:** Laws 1975, LB 333, § 3; Laws 1977, LB 91, § 4; Laws 1980, LB 889, § 7; Laws 1983, LB 617, § 26; Laws 1992, LB 366, § 40; Laws 1997, LB 752, § 218.

**81-2,162.24 Repealed. Laws 1980, LB 889, § 9.**

**81-2,162.25 Misbranded commercial fertilizer or soil conditioner; distribution unlawful; how determined.**

No person shall distribute misbranded commercial fertilizers or soil conditioners. A commercial fertilizer or soil conditioner shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another commercial fertilizer or soil conditioner;

(3) It is not labeled as required by the Nebraska Commercial Fertilizer and Soil Conditioner Act or the regulations promulgated under the act;

(4) It purports to be or is represented as a commercial fertilizer or soil conditioner or as containing an ingredient, for which a definition of identity or standard of quality has been prescribed by regulation of the department, unless it conforms to such definition and standard; or

(5) Any word, statement, or other information required by the act or the regulations promulgated under the act to appear on the label is not prominently displayed with such conspicuousness, as compared with other words, statements, designs, or devices, on the label, and in such terms as to render it likely to be read and understood by an individual under customary conditions of purchase and use.

**Source:** Laws 1975, LB 333, § 10; Laws 1992, LB 366, § 41.

**81-2,162.26 Adulterated commercial fertilizer or soil conditioner; distribution unlawful; how determined.**

No person shall distribute adulterated commercial fertilizers or soil conditioners. A commercial fertilizer or soil conditioner shall be deemed to be adulterated if:

- (1) It contains any toxic materials, other than pesticides registered pursuant to law, in quantities injurious to plant or animal health;
- (2) Any valuable constituent has been in whole or in part omitted or subtracted therefrom or any less valuable substance substituted therefor;
- (3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its label;
- (4) Warning statements or directions for use, as prescribed by the director to be shown on the label, are not displayed thereon; or
- (5) It contains amounts of crop seed, weed seed, or other foreign materials in excess of tolerances as may be established by rules and regulations of the department.

**Source:** Laws 1975, LB 333, § 11; Laws 1980, LB 889, § 8.

**81-2,162.27 Fertilizers and Soil Conditioners Administrative Fund; created; use; investment.**

(1) All money received under the Nebraska Commercial Fertilizer and Soil Conditioner Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund, which fund is hereby created. All money so received shall be used by the department for defraying the expenses of administering the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act.

(2) Any unexpended balance in the Fertilizers and Soil Conditioners Administrative 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.

**Source:** Laws 1975, LB 333, § 22; Laws 1986, LB 258, § 32; Laws 1995, LB 7, § 99; Laws 2001, LB 329, § 14; Laws 2003, LB 157, § 4.

**Cross References**

**Agricultural Liming Materials Act**, see section 2-4301.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-2,162.28 Preemption of local law.**

The Nebraska Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder shall supersede and preempt any ordinance, rule, regulation, or resolution enacted by any political subdivision of the state regarding the regulation of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the registration, labeling, or sale of fertilizer and soil conditioners. No political subdivision shall prohibit or in any other manner regulate any matter relating to the storage, transportation, distribution, notification of use, or use that is in addition to or in conflict with the Nebraska

Commercial Fertilizer and Soil Conditioner Act and any rules and regulations adopted and promulgated thereunder. Nothing in this section shall be construed to preempt or otherwise limit the authority of any city or county to adopt and enforce zoning regulations or any natural resources district to enforce the Nebraska Ground Water Management and Protection Act.

**Source:** Laws 2009, LB263, § 3.

**Cross References**

Nebraska Ground Water Management and Protection Act, see section 46-701.

(o) PUBLICITY

**81-2,163 State resources and industries; department; publications.**

The Department of Agriculture may serve as an information bureau in reference to the state's resources, industries, and development and may assemble data relating to the resources and industries of the state and to the physical, economical, and social conditions existing therein. The department may publish the facts ascertained, may charge for departmental publications an amount not to exceed the cost of collecting, publishing, and distributing such statistical information for the purposes of sections 81-201 and 81-2,163 to 81-2,164.03, and by means of publicity may promote the development of the resources of the state to the welfare of its inhabitants.

**Source:** Laws 1919, c. 190, tit. III, art. XXI, § 1, p. 545; C.S.1922, § 7640; C.S.1929, § 81-2501; R.S.1943, § 81-2,163; Laws 1986, LB 795, § 1.

**81-2,164 Tenants; information and statistics; publication.**

The Department of Agriculture is granted authority to have gathered, tabulated and published, information and statistics showing the conditions of the tenants and renters in rural communities and incorporated villages and cities of this state.

**Source:** Laws 1919, c. 262, § 1, p. 1060; C.S.1922, § 7641; C.S.1929, § 81-2502; R.S.1943, § 81-2,164.

**81-2,164.01 Agricultural products; Department of Agriculture; cooperate with federal government; information and statistics; publication.**

The Department of Agriculture is hereby authorized to cooperate with the federal government and other farm industry groups or associations in assembling and disseminating current and timely information, regarding prices and market conditions relating to agricultural products produced, throughout the State of Nebraska. The department may disseminate, without expense, through the newspapers, through radio and television media, or by telephone facilities designed for such purpose, timely reports of such information as will be of general value and benefit to the producers and dealers in agricultural products to promote and assist the agriculture industry.

**Source:** Laws 1953, c. 337, § 1, p. 1110; Laws 1974, LB 888, § 1; Laws 1986, LB 795, § 2.

**81-2,164.02 Agricultural products; department and director; powers and duties; designation of bureau.**

The Director of Agriculture is hereby authorized to designate such bureau and such personnel of the Department of Agriculture as he may deem proper and necessary to perform and carry out the provisions of sections 81-2,164.01 to 81-2,164.03.

**Source:** Laws 1953, c. 337, § 2, p. 1110.

**81-2,164.03 Agricultural Products Marketing Information Cash Fund; created; use; investment.**

The Director of Agriculture is hereby authorized to receive voluntary gifts and contributions from the federal government, private agencies, farm industry associations, and individuals or to collect fees or charges for services or publications from any source, including, but not limited to, the federal government, state governments, public agencies, and private entities or individuals for the purpose of defraying the expenses of carrying out subdivision (3) of section 81-201 and sections 81-2,163 to 81-2,164.03. All advances so received shall be credited to the Agricultural Products Marketing Information Cash Fund, which fund is hereby created. Disbursements from such fund shall be made upon vouchers approved by the director and warrants issued thereon as provided by law. All money received from the federal government, local government agencies, private research agencies, farm industry associations, or individuals, which are reimbursements for expenditures made, shall be remitted to the State Treasurer for credit to the Agricultural Products Marketing Information Cash 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 1953, c. 337, § 3, p. 1110; Laws 1955, c. 335, § 1, p. 1047; Laws 1965, c. 8, § 48, p. 117; Laws 1974, LB 888, § 2; Laws 1986, LB 795, § 3; Laws 1995, LB 7, § 100.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

(p) BEEKEEPING

**81-2,165 Beekeeping; inspections; rules and regulations; duties of department and director.**

The department is authorized to enforce the Nebraska Apiary Act. The director may make or cause to be made all necessary examinations and inspections and adopt and promulgate such rules, regulations, and orders as may be necessary to carry out the duties of the department under the act.

The department within its authority and funding appropriated to carry out the purposes of the act may take all measures necessary to prevent the introduction, spread, or dissemination of any and all contagious or infectious diseases, parasites, or pests of honeybees and to bring or cause to be brought actions and proceedings in the name of the people of the State of Nebraska to fulfill its duties under the act.

**Source:** Laws 1929, c. 9, § 1, p. 76; C.S.1929, § 81-2701; R.S.1943, § 81-2,165; Laws 1965, c. 548, § 1, p. 1752; Laws 1967, c. 583, § 1, p. 1964; Laws 1971, LB 403, § 1; Laws 1986, LB 1001, § 1; Laws 1992, LB 366, § 42; Laws 1994, LB 1071, § 2; Laws 2004, LB 835, § 1.

**81-2,165.01 Act, how cited.**

Sections 81-2,165 to 81-2,180 shall be known and may be cited as the Nebraska Apiary Act.

**Source:** Laws 1992, LB 366, § 54; Laws 1994, LB 1071, § 3.

**81-2,165.02 Beekeeping; legislative intent; responsibility for education.**

It is the intent of the Legislature that the department is not responsible for education regarding good beekeeping practices and education intended to aid in the protection of the apicultural interests in the state from bee diseases, parasites, or pests.

It is further the intent of the Legislature that the University of Nebraska provide such education in accordance with the transfer of appropriations to the university for this purpose.

**Source:** Laws 1994, LB 1071, § 1.

**81-2,166 Terms, defined.**

For purposes of the Nebraska Apiary Act, unless the context otherwise requires:

(1) Abandoned apiary shall mean any apiary not regularly attended in accordance with good beekeeping practices and which constitutes a disease, parasite, or pest hazard to the beekeeping industry;

(2) Apiary shall mean any place where one or more colonies of bees or nuclei of bees are located;

(3) Bee equipment shall mean hives, supers, frames, veils, gloves, or any other apparatus, tool, machine, vehicle, or device used in the handling, moving, or manipulating of bees, honey, wax, or hives, including containers of honey or wax which may be used in any apiary or in transporting bees and their products and apiary supplies;

(4) Beekeeping shall mean the moving, raising, and producing of bees, beeswax, and honey which is an agricultural pursuit;

(5) Bees shall mean any stage of the common honeybee, *Apis mellifera* L;

(6) Colony shall mean the aggregate of worker bees, drones, the queen, and developing young bees living together as a family unit in a hive or other dwelling;

(7) Department shall mean the Department of Agriculture;

(8) Director shall mean the Director of Agriculture or his or her designated representative, employee, or authorized agent;

(9) Disease shall mean American foulbrood, European foulbrood, chalkbrood, sacbrood, paralysis, or any other abnormal condition of egg, larva, pupa, or adult stages of bees;

(10) Exotic disease, parasite, or pest shall mean any disease, parasite, or pest not known to be established in this state;

(11) Hive shall mean a frame hive, box hive, box, barrel, log gum, skep, or any other receptacle or container, natural or artificial, or any part thereof, which is used or employed as a domicile for bees;

(12) Nuclei shall mean a small mass of bees and combs of brood used in forming a new colony;

(13) Parasite shall mean any harmful organism living in or on bees, including, but not limited to, *Varroa jacobsoni*, *Acarapis woodi*, and *Tropilaelaps clareae*; and

(14) Pest shall mean any harmful subspecies of the honeybee *Apis mellifera*, including, but not limited to, *Apis mellifera scutellata*.

Words used in the act shall be construed to import either the plural or singular, as the case demands.

**Source:** Laws 1929, c. 9, § 2, p. 76; C.S.1929, § 81-2702; R.S.1943, § 81-2,166; Laws 1961, c. 426, § 1, p. 1331; Laws 1965, c. 548, § 3, p. 1754; Laws 1967, c. 583, § 2, p. 1965; Laws 1986, LB 1001, § 2; Laws 1992, LB 366, § 43; Laws 1994, LB 1071, § 4; Laws 2004, LB 835, § 2.

### **81-2,167 Beekeeping; department; inspection; purpose; violations.**

In order to carry out its duties under the Nebraska Apiary Act or any rule, regulation, or order made pursuant to the act, the officers and employees of the department may at all reasonable times enter upon any public or private premises for the purpose of inspection for the existence of or for treatment or destruction of any contagious or infectious diseases, parasites, or pests of bees. They shall have free access to all apiaries, structures, bee equipment, or premises where bees, honey, used bee equipment, or comb in apiaries may be. They may open any hive, colony, package, or receptacle of any kind containing or which they have reason to believe contains any bees, comb, bee products, used beekeeping equipment, or anything else which is capable of transmitting diseases, parasites, or pests of bees. They may stop pedestrians, motor cars, and vehicles when they are likely to be carrying, contrary to the act or any rule, regulation, or order established pursuant to the act, any bees, comb, used bee equipment, or anything else which is capable of transmitting diseases, parasites, or pests of bees. They shall have authority to inspect or reinspect at any time or place any bees, bee products, or used bee equipment shipped in or into the state and to treat it as provided in section 81-2,171. It shall be unlawful to deny such access to the officers and employees of the department or to offer any resistance to, thwart, or hinder such officers and employees by misrepresentation or by concealing facts or conditions. They shall have the power to inspect any apiary, honey house, building, or portion of building or container in which honey is stored, graded, or processed and to determine whether or not any insanitary conditions exist. If it is found that insanitary conditions exist or are permitted to exist, the owner or person in charge, after being notified by the department of the insanitary conditions, shall place such apiary, honey house, building, or portion of building or container in a sanitary condition within a reasonable length of time, and any operator or owner of such apiary, honey house, building, or container failing to obey such notice shall be in violation of the act and shall be punished as provided in section 81-2,179. Each apiary not located at the owner's or operator's place of residence shall have posted in a conspicuous place the name and address of the owner.

**Source:** Laws 1929, c. 9, § 3, p. 77; C.S.1929, § 81-2703; R.S.1943, § 81-2,167; Laws 1965, c. 548, § 4, p. 1755; Laws 1986, LB 1001, § 3; Laws 1992, LB 366, § 44; Laws 1994, LB 1071, § 5; Laws 2004, LB 835, § 3.

**81-2,168 Beekeeping; inspection; notice to owner; University of Nebraska; duties.**

If upon inspection of any bee colonies in the state the existence of diseases, parasites, or pests are found, the owner or person in charge of the bees, after being notified by the department of the nature of the disease, parasite, or pest shall use the best method of treating such disease, parasite, or pest.

Within the appropriation provided, the University of Nebraska shall provide information for beekeepers regarding the best method of preventing or treating such disease, parasite, or pest. When establishing the best method of prevention or treatment, the University of Nebraska shall consider (1) the specific disease, parasite, or pest found, (2) the severity of the infestation, (3) the time of year such disease, parasite, or pest was found, (4) the effectiveness of current control methods, and (5) any other factors deemed necessary by the University of Nebraska to effectively control the disease, parasite, or pest.

**Source:** Laws 1929, c. 9, § 4, p. 78; C.S.1929, § 81-2704; R.S.1943, § 81-2,168; Laws 1957, c. 242, § 59, p. 866; Laws 1986, LB 1001, § 4; Laws 1992, LB 366, § 45; Laws 1994, LB 1071, § 6.

**81-2,169 Beekeeping; infected bees or apiaries; nuisance; destruction.**

Infected shipments, apiaries in which the existing disease, parasite, or pest cannot be successfully treated, apiaries which are affected by a disease, parasite, or pest amenable to treatment but which have not been treated as provided in section 81-2,168, and apiaries having bees in hives without movable frames or any colonies of bees or shipments of used bee equipment which entered this state illegally are declared to be a public nuisance and menace to the community, and the officers and employees of the department may destroy by burning or otherwise, without any remuneration to the owner, any box hives or infected bees, hives, or used bee equipment found therein.

**Source:** Laws 1929, c. 9, § 5, p. 78; C.S.1929, § 81-2705; R.S.1943, § 81-2,169; Laws 1965, c. 548, § 5, p. 1756; Laws 1986, LB 1001, § 5; Laws 1992, LB 366, § 46; Laws 1994, LB 1071, § 7.

**81-2,170 Beekeeping; contagion or infection; duty of owner to report to department; quarantine; when; notice; effect.**

(1) It shall be unlawful for any person knowingly to keep in his or her possession, without proper treatment, any colony of bees affected with any bee diseases, parasites, or pests or to expose any diseased or parasitized colony or infected hive or bee equipment so that flying bees may have access to them. Any person who knows that bees owned or controlled by him or her are affected with contagious or infectious diseases, parasites, or pests shall at once report such fact to the department stating all facts known to him or her with reference to the contagion or infection. When it has been determined that contagious or infectious diseases, parasites, or pests have been found in an apiary, such apiary may be quarantined by the department until released by the department. Whenever American foulbrood is found in the apiary, no colony, honey, or bee equipment of any kind shall be removed from the apiary unless under special written permit issued by the department. A notice shall be posted in each yard so quarantined, and written notice shall be sent to the owner or person in charge. Should any state be willing to accept bees or used bee equipment from a quarantined yard of bees in Nebraska, the department may, after all known

contagious or infectious diseases, parasites, or pests have been destroyed, issue a special permit allowing bees and used bee equipment to be moved out of the state.

(2) If an exotic disease, parasite, or pest is found to have been introduced into this state, the director shall have the authority to quarantine any portion of this state until he or she can determine whether the disease, pest, or parasite has spread and may take action to eradicate or prevent the spread of the exotic disease, parasite, or pest as provided in the Nebraska Apiary Act. Beekeepers affected shall be notified in writing of the quarantine and shall also be notified in writing when the quarantine is released.

**Source:** Laws 1929, c. 9, § 6, p. 79; C.S.1929, § 81-2706; R.S.1943, § 81-2,170; Laws 1965, c. 548, § 6, p. 1757; Laws 1967, c. 583, § 3, p. 1966; Laws 1976, LB 722, § 1; Laws 1986, LB 1001, § 6; Laws 1992, LB 366, § 47; Laws 1994, LB 1071, § 8; Laws 2004, LB 835, § 4.

**81-2,171 Beekeeping; abandoned apiary; seized by department; notice.**

Any apiary not regularly attended in accordance with good beekeeping practice and which constitutes a disease, parasite, or pest hazard to the beekeeping industry may be considered an abandoned apiary and may be seized by the department. Any diseased bee equipment may be burned and the remainder may be sold at public auction, with proceeds after the cost of the sale are deducted to be returned to the former owner or his or her estate, except that before burning any such equipment or causing the same to be sold, the department shall give the owner or person in charge thereof a written notice at least ten days prior to the date on which the property will be burned or sold. Such notice shall be given by registered or certified mail or personally served upon the owner or person in charge of such property.

**Source:** Laws 1929, c. 9, § 7, p. 79; C.S.1929, § 81-2707; R.S.1943, § 81-2,171; Laws 1961, c. 426, § 2, p. 1332; Laws 1965, c. 548, § 7, p. 1758; Laws 1967, c. 583, § 4, p. 1967; Laws 1976, LB 722, § 2; Laws 1979, LB 548, § 1; Laws 1986, LB 1001, § 7; Laws 1992, LB 366, § 48; Laws 1994, LB 1071, § 9; Laws 2004, LB 835, § 5.

**81-2,171.01 Repealed. Laws 1976, LB 722, § 4.**

**81-2,172 Repealed. Laws 2004, LB 835, § 9.**

**81-2,173 Beekeeping; inspection certificate; procedure.**

(1) The department shall issue certificates stating that an apiary is apparently free from infectious or contagious diseases, parasites, or pests after inspecting the apiary when such apiary is apparently free from such diseases, parasites, and pests and upon payment of the certificate fee provided for in section 81-2,174. Such certificate shall also state the date of inspection and shall continue in force for one year unless revoked for cause.

(2) Any person may request an inspection for his or her apiary in order to obtain a certificate.

**Source:** Laws 1929, c. 9, § 9, p. 80; C.S.1929, § 81-2709; R.S.1943, § 81-2,173; Laws 1979, LB 548, § 2; Laws 1986, LB 1001, § 8; Laws 1992, LB 366, § 49; Laws 1994, LB 1071, § 11; Laws 2002, LB 436, § 26; Laws 2004, LB 835, § 6.

**81-2,174 Beekeeping; inspection certificate; fees; State Apiary Cash Fund; created; use; investment.**

Upon issuing a certificate to a beekeeper after an inspection as provided in section 81-2,173, the department shall collect a certificate fee as set forth in rules and regulations adopted and promulgated pursuant to the Nebraska Apiary Act not to exceed the following amounts: Two hundred dollars for the inspection of two hundred fifty colonies or less; two hundred fifty dollars for the inspection of two hundred fifty-one through five hundred colonies; three hundred fifty dollars for the inspection of five hundred one through one thousand colonies; and four hundred fifty dollars for the inspection of more than one thousand colonies. The certification fee shall be paid prior to the issuance of certificates by the department. All fees and any gifts, grants, or donations from any source shall be remitted to the State Treasurer for credit to the State Apiary Cash Fund which is hereby created. The fund shall be used to defray the expenses of administering the Nebraska Apiary 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 1929, c. 9, § 10, p. 81; C.S.1929, § 81-2710; R.S.1943, § 81-2,174; Laws 1965, c. 8, § 49, p. 118; Laws 1976, LB 722, § 3; Laws 1983, LB 617, § 27; Laws 1986, LB 1001, § 9; Laws 1994, LB 1071, § 12; Laws 1995, LB 7, § 101; Laws 2004, LB 835, § 7.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-2,175 Repealed. Laws 1986, LB 1001, § 13.****81-2,176 Beekeeping; inspection certificate; unlawful use; penalty.**

If it is found that any certificate issued or approved by the department (1) is being used in connection with bees, queen bees, or used bee equipment (a) which have not been inspected, (b) which are infected with any infectious or contagious disease, parasite, or pest, or (c) which are being sold or delivered without the prescribed treatment being observed or other precautionary measures prescribed by the department taken by the owner or (2) is being used by persons other than the one to whom it was issued without the permission of the department, the department may revoke or withdraw such certificate. The use of such certificate issued by the department after it has been revoked and before such revocation has been withdrawn by the department shall be unlawful and shall subject the holder thereof to the penalty prescribed for a violation of the Nebraska Apiary Act. Revocation or withdrawal of approval shall be through written notice to the holder of the certificate.

**Source:** Laws 1929, c. 9, § 12, p. 81; C.S.1929, § 81-2712; R.S.1943, § 81-2,176; Laws 1986, LB 1001, § 10; Laws 1992, LB 366, § 50; Laws 1994, LB 1071, § 13.

**81-2,177 Repealed. Laws 1979, LB 548, § 4.****81-2,177.01 Repealed. Laws 2004, LB 835, § 9.**

**81-2,178 Repealed. Laws 1967, c. 583, § 7.****81-2,179 Beekeeping; director; enforcement powers; county attorney or Attorney General; duties; violations; penalty.**

(1) If the director has reason to believe that any person has violated any of the provisions of the Nebraska Apiary Act or any rules and regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice to be given at least twenty days before the date of such hearing. After such hearing, if the director finds such person to be in violation, the director shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions. Such order shall be a final order. Any person aggrieved may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Nebraska Apiary Act, the rules and regulations, or a final order of the director. The district court of the county where the violation 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.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur when notified by the department of a violation or a threatened violation to institute appropriate proceedings either criminal, injunctive, or both without delay.

(4) Any person violating any of the provisions of the Nebraska Apiary Act shall be guilty of a Class III misdemeanor.

**Source:** Laws 1929, c. 9, § 15, p. 82; C.S.1929, § 81-2715; R.S.1943, § 81-2,179; Laws 1961, c. 426, § 3, p. 1334; Laws 1965, c. 548, § 8, p. 1761; Laws 1977, LB 39, § 284; Laws 1992, LB 366, § 52; Laws 1994, LB 1071, § 15.

**Cross References**

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

**81-2,180 Beekeeping; liability of beekeeper for acts of agent.**

Every person who by agents or representatives shall cause any act to be done in violation of the Nebraska Apiary Act shall be responsible for the acts performed by such agent or representative.

**Source:** Laws 1929, c. 9, § 16, p. 82; C.S.Supp.,1941, § 81-2716; R.S. 1943, § 81-2,180; Laws 1992, LB 366, § 53.

**81-2,181 Honey; Department of Agriculture; adopt standard; label restrictions; violation; remedy or penalty.**

(1) It is the intent of the Legislature to provide for an identity standard for packaged food products labeled as honey in order to aid consumer information and to protect the integrity of the honey industry in Nebraska.

(2) The Department of Agriculture shall adopt and promulgate rules and regulations that adopt a standard for all honeys produced by honey bees. In promulgating a standard for honey, the department may utilize as a guideline available authoritative references to the composition and grades of honey. Such rules and regulations shall be effective on or before January 1, 2012.

(3) A product shall not be labeled as honey or be labeled as to imply that the product is honey unless the product meets the standard for honey adopted by the Department of Agriculture under subsection (2) of this section.

(4) A violation of subsection (3) of this section shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and shall be subject to any remedies or penalties available for a violation under the act.

**Source:** Laws 2011, LB114, § 1.

**Cross References**

Uniform Deceptive Trade Practices Act, see section 87-306.

(q) SOFT DRINKS

**81-2,182 Repealed. Laws 1981, LB 487, § 62.**

**81-2,183 Repealed. Laws 1981, LB 487, § 62.**

**81-2,184 Repealed. Laws 1981, LB 487, § 62.**

**81-2,185 Repealed. Laws 1981, LB 487, § 62.**

(r) ANTIFREEZE

**81-2,186 Repealed. Laws 1981, LB 497, § 1.**

**81-2,187 Repealed. Laws 1981, LB 497, § 1.**

**81-2,188 Repealed. Laws 1981, LB 497, § 1.**

**81-2,189 Repealed. Laws 1981, LB 497, § 1.**

**81-2,190 Repealed. Laws 1981, LB 497, § 1.**

**81-2,191 Repealed. Laws 1981, LB 497, § 1.**

**81-2,192 Repealed. Laws 1981, LB 497, § 1.**

**81-2,193 Repealed. Laws 1981, LB 497, § 1.**

**81-2,194 Repealed. Laws 1981, LB 497, § 1.**

**81-2,195 Repealed. Laws 1981, LB 497, § 1.**

**81-2,196 Repealed. Laws 1981, LB 497, § 1.**

**81-2,197 Repealed. Laws 1981, LB 497, § 1.**

(s) MOBILE HOME COURTS

**81-2,198 Repealed. Laws 1959, c. 303, § 11.**

**81-2,199 Repealed. Laws 1959, c. 303, § 11.**

- 81-2,200 Repealed. Laws 1959, c. 303, § 11.  
81-2,201 Repealed. Laws 1959, c. 303, § 11.  
81-2,202 Repealed. Laws 1959, c. 303, § 11.  
81-2,203 Repealed. Laws 1959, c. 303, § 11.  
81-2,204 Repealed. Laws 1959, c. 303, § 11.  
81-2,205 Repealed. Laws 1959, c. 303, § 11.  
81-2,206 Repealed. Laws 1959, c. 303, § 11.  
81-2,207 Repealed. Laws 1959, c. 303, § 11.  
81-2,208 Repealed. Laws 1959, c. 303, § 11.  
81-2,209 Repealed. Laws 1959, c. 303, § 11.  
81-2,210 Repealed. Laws 1959, c. 303, § 11.

(t) MEATS

- 81-2,211 Repealed. Laws 1969, c. 793, § 1.  
81-2,212 Repealed. Laws 1969, c. 793, § 1.  
81-2,213 Repealed. Laws 1969, c. 793, § 1.  
81-2,214 Repealed. Laws 1969, c. 793, § 1.  
81-2,215 Repealed. Laws 1969, c. 793, § 1.  
81-2,216 Repealed. Laws 1969, c. 793, § 1.

(u) GRADE A MILK

- 81-2,217 Repealed. Laws 1980, LB 632, § 47.  
81-2,218 Repealed. Laws 1980, LB 632, § 47.  
81-2,219 Repealed. Laws 1980, LB 632, § 47.  
81-2,220 Repealed. Laws 1980, LB 632, § 47.  
81-2,221 Repealed. Laws 1980, LB 632, § 47.  
81-2,222 Repealed. Laws 1980, LB 632, § 47.  
81-2,223 Repealed. Laws 1980, LB 632, § 47.  
81-2,224 Repealed. Laws 1980, LB 632, § 47.  
81-2,225 Repealed. Laws 1980, LB 632, § 47.  
81-2,226 Repealed. Laws 1980, LB 632, § 47.  
81-2,227 Repealed. Laws 1980, LB 632, § 47.

**81-2,228 Repealed. Laws 1980, LB 632, § 47.**

**81-2,229 Repealed. Laws 1980, LB 632, § 47.**

**81-2,230 Repealed. Laws 1980, LB 632, § 47.**

**81-2,231 Repealed. Laws 1980, LB 632, § 47.**

**81-2,232 Repealed. Laws 1980, LB 632, § 47.**

(v) ORGANIC FOOD

**81-2,233 Terms, defined.**

For purposes of sections 81-2,233 to 81-2,235, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Food product shall mean any grain, meat, dairy product, beverage, or similar product which is grown or raised and any product which is composed of ingredients which are grown or raised; and

(3) Organic food shall mean any food product which is grown or raised or the ingredients of which are grown or raised.

**Source:** Laws 1986, LB 1016, § 1.

**81-2,234 Department; compile list of persons who grow or raise organic food; adopt rules and regulations; criteria.**

(1) The department may compile a list of persons who grow or raise organic food and adopt and promulgate rules and regulations including a provision for standards for organic food and marketing practices.

(2) In adopting and promulgating rules and regulations which provide standards for organic food and marketing practices, the department may utilize, but shall not be limited to, the following criteria:

(a) No synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, or arsenicals may be used in the growing or raising of the food product or in the growing or raising of any ingredients of which the food product is composed. Natural substances such as diatomaceous earth, soaps, elemental sulfur, lime sulfur, and basic copper sulfate may be used;

(b) Treated seed may be used in growing a food product or ingredient only when untreated seed is not available;

(c) The food product or ingredient may be grown or raised only on soil which is free of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, and arsenicals (i) through March 31, 1988, for one year, (ii) after March 31, 1988, and through March 31, 1989, for two years, and (iii) after March 31, 1989, for three years; and

(d) If fumigation is needed, only diatomaceous earth or inert gas may be used.

Such food products or ingredients may be stored in a regular, cold, or controlled atmosphere.

**Source:** Laws 1986, LB 1016, § 2.

**81-2,235 Persons who grow or raise food products; duty to provide information.**

Persons who grow or raise food products or the ingredients for food products shall provide the department, upon demand, with relevant information and records as the department deems necessary to carry out its duties under sections 81-2,233 to 81-2,235.

**Source:** Laws 1986, LB 1016, § 3.

**(w) ANIMAL DAMAGE CONTROL****81-2,236 Director; contract and cooperate with federal government; expenditure of funds.**

The Director of Agriculture may contract and cooperate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture in the management and control of (1) coyotes, bobcats, foxes, and other predatory animals listed in section 23-358 in this state that are injurious to livestock, poultry, and game animals and the public health, (2) black-tailed prairie dogs and other injurious commensal and field rodents, and (3) nuisance birds or other nuisance wildlife in accordance with organized and systematic plans of the Animal and Plant Health Inspection Service of the United States Department of Agriculture for the management and control of such animals. Supervision of the program shall be by the local representative of the Animal and Plant Health Inspection Service of the United States Department of Agriculture. Expenditure of funds appropriated by the Legislature may not be made without the approval in writing by the director. The director in cooperation with the Animal and Plant Health Inspection Service of the United States Department of Agriculture may enter into agreements with other governmental agencies and with counties, associations, corporations, or individuals when such cooperation is deemed to be necessary to promote the management and control of such predatory animals, black-tailed prairie dogs and other injurious commensal and field rodents, nuisance birds, or other nuisance wildlife.

**Source:** Laws 1965, c. 96, § 1, p. 413; Laws 1967, c. 124, § 2, p. 399; R.S.1943, (1983), § 23-609; Laws 1987, LB 102, § 6; Laws 2012, LB473, § 11.

**Cross References**

County animal damage control program, see sections 23-358 to 23-361.

**81-2,237 Animal Damage Control Cash Fund; created; investment.**

There is hereby created the Animal Damage Control Cash Fund. Such fund shall be administered by the Department of Agriculture. The fund shall consist of funds received from any source to carry out the animal damage control program pursuant to section 81-2,236. 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 102, § 7; Laws 1995, LB 7, § 102.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-2,238 Director; cooperation with state agencies; receipt of funds.**

The Director of Agriculture may cooperate with and receive funds from other agencies or departments of the state for the purposes of section 81-2,236 and may accept from any political subdivision of the state, private association, or other source such funds, contributions, payments, gifts, or bequests as may be given or paid under contractual agreement to the department. Such funds shall be deposited in the Animal Damage Control Cash Fund.

**Source:** Laws 1987, LB 102, § 8.

**(x) NEBRASKA PURE FOOD ACT****81-2,239 Nebraska Pure Food Act; provisions included; how cited.**

Sections 81-2,239 to 81-2,292 and the provisions of the Food Code, the Food Salvage Code, and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 to 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

**Source:** Laws 1981, LB 487, § 5; Laws 1989, LB 548, § 3; R.S.Supp.,1990, § 81-216.01; Laws 1991, LB 358, § 8; Laws 1992, LB 366, § 55; Laws 1997, LB 199, § 3; Laws 1999, LB 474, § 1; Laws 2003, LB 250, § 3; Laws 2004, LB 1045, § 1; Laws 2005, LB 131, § 1; Laws 2007, LB74, § 1; Laws 2012, LB771, § 1.

**81-2,240 Definitions, where found.**

For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-2,241 to 81-2,254.01 shall be used. In addition, the definitions found in the codes and practice adopted by reference in sections 81-2,257.01 to 81-2,259 shall be used.

**Source:** Laws 1981, LB 487, § 6; Laws 1989, LB 548, § 4; R.S.Supp.,1990, § 81-216.02; Laws 1991, LB 358, § 9; Laws 1992, LB 366, § 56; Laws 1997, LB 199, § 4; Laws 1999, LB 474, § 2; Laws 2004, LB 1045, § 2; Laws 2005, LB 131, § 2.

**81-2,241 Advertising, defined.**

Advertising shall mean all representations disseminated in any manner, other than labeling, intended or likely to induce the purchase or use of food, including a menu.

**Source:** Laws 1981, LB 487, § 15; R.S.1943, (1987), § 81-216.11; Laws 1991, LB 358, § 10.

**81-2,242 Bed and breakfast establishment, defined.**

Bed and breakfast establishment shall mean any place of lodging that provides rented rooms to ten or fewer people, that is the personal residence of the owner, that is occupied by the owner at the time of rental, and in which the only meal served to renters is breakfast.

**Source:** Laws 1989, LB 548, § 2; R.S.Supp.,1990, § 81-216.39; Laws 1991, LB 358, § 11.

**81-2,242.01 Caterer, defined.**

Caterer shall mean a person in the business of providing food to a customer for parties, banquets, or other similar functions at a location owned, rented, or otherwise controlled by the customer.

**Source:** Laws 1997, LB 199, § 5.

**81-2,242.02 Commissary, defined.**

Commissary shall mean a food establishment where food, food containers, or food supplies are kept, handled, prepared, packaged, or stored for use in mobile food units, pushcarts, or vending machines.

**Source:** Laws 1997, LB 199, § 6.

**81-2,242.03 Convenience store, defined.**

Convenience store shall mean a food establishment or section of an establishment where the food offered to the consumer is intended for off-premise consumption and there are no meat processing or produce processing areas.

**Source:** Laws 1997, LB 199, § 7.

**81-2,242.04 Commercial food establishment, defined.**

Commercial food establishment means an operation with a permanent sales location and such location has more than one hundred cubic feet of area containing food.

**Source:** Laws 2005, LB 131, § 3.

**81-2,243 Department, defined.**

Department shall mean the Department of Agriculture.

**Source:** Laws 1981, LB 487, § 12; R.S.1943, (1987), § 81-216.08; Laws 1991, LB 358, § 12.

**81-2,244 Director, defined.**

Director shall mean the Director of Agriculture or his or her designated employee, representative, or authorized agent.

**Source:** Laws 1981, LB 487, § 13; R.S.1943, (1987), § 81-216.09; Laws 1991, LB 358, § 13.

**81-2,244.01 Food Code, defined.**

Food Code shall mean the 2009 Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment and sections 2-103.11(K), 3-301.11(B), (C), and (D), 3-304.13, 3-501.16, 3-501.17, 3-501.18, 3-502.11, 3-502.12, 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C), 5-104.11, 6-301.14, 8-101, 8-102, 8-201.11, 8-201.12, 8-201.13(A)(2) and (3) and (B), 8-201.14(C), 8-202 through 8-304, 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term Food Code does not include the annexes of such federal recommendations.

**Source:** Laws 1997, LB 199, § 8; Laws 1999, LB 474, § 3; Laws 2003, LB 250, § 4; Laws 2007, LB74, § 2; Laws 2012, LB771, § 2.

**81-2,245 Repealed. Laws 1997, LB 199, § 63.****81-2,245.01 Food establishment, defined.**

Food establishment shall mean an operation that stores, prepares, packages, serves, sells, vends, or otherwise provides food for human consumption. The term does not include:

(1) An establishment or vending machine operation that offers only prepackaged soft drinks, carbonated or noncarbonated; canned or bottled fruit and vegetable juices; prepackaged ice; candy; chewing gum; potato or corn chips; pretzels; cheese puffs and curls; crackers; popped popcorn; nuts and edible seeds; and cookies, cakes, pies, and other pastries, that are not potentially hazardous foods;

(2) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(3) A food processing plant;

(4) A salvage operation;

(5) A private home where food is prepared or served for personal use, a small day care in the home, or a hunting lodge, guest ranch, or other operation where no more than ten paying guests eat meals in the home;

(6) A private home or other area where food that is not potentially hazardous food is prepared: (a) For sale or service at a religious, charitable, or fraternal organization's bake sale or similar function; or (b) for sale directly to the consumer at a farmers market if the consumer is informed by a clearly visible placard at the sale location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

(7) A private home or other area where food is prepared for distribution at a fundraising event for a charitable purpose if the consumer is informed by a clearly visible placard at the serving location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority. This subdivision does not apply to a caterer or other establishment providing food for the event if the caterer or establishment receives compensation for providing the food;

(8) The location where food prepared by a caterer is served so long as the caterer only minimally handles the food at the serving location;

(9) Educational institutions, health care facilities, nursing homes, and governmental organizations which are inspected by a state agency or a political subdivision other than the regulatory authority for sanitation in the food preparation areas;

(10) A pharmacy as defined in section 71-425 if the pharmacy only sells prepackaged pharmaceutical, medicinal, or health supplement foods that are not potentially hazardous or foods described in subdivision (1) of this section; and

(11) An establishment which is not a commercial food establishment and which sells only commercially packaged foods that are not potentially hazardous foods.

**Source:** Laws 1997, LB 199, § 9; Laws 1999, LB 474, § 4; Laws 2003, LB 250, § 5; Laws 2005, LB 131, § 4.

**81-2,246 Repealed. Laws 1997, LB 199, § 63.****81-2,246.01 Food processing plant, defined.**

Food processing plant shall mean a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to the consumer.

**Source:** Laws 1997, LB 199, § 10.

**81-2,247 Food Salvage Code, defined.**

Food Salvage Code shall mean the 1984 Recommendation of the Association of Food and Drug Officials and United States Department of Health and Human Services entitled Model Food Salvage Code, as it exists on June 8, 1985, except sections 1-102(h), 6-401, 6-501, 8-101, 8-201, 11-101, 12-101 through 12-106, 12-201, 12-202, 12-301, 12-401, 12-402, and 12-601 of such code.

**Source:** Laws 1981, LB 487, § 9; Laws 1985, LB 460, § 8; R.S.1943, (1987), § 81-216.05; Laws 1991, LB 358, § 16; Laws 1992, LB 366, § 57.

**81-2,248 Itinerant food vendor, defined.**

Itinerant food vendor shall mean a person that sells prepackaged, potentially hazardous food from an approved source at a nonpermanent location such as a farmers market, craft show, or county fair.

**Source:** Laws 2007, LB74, § 3.

**81-2,249 Repealed. Laws 1997, LB 199, § 63.****81-2,250 Repealed. Laws 1997, LB 199, § 63.****81-2,251 Labeling, defined.**

Labeling shall mean the display of written, printed, or graphic matter upon the immediate container of an article of food or which accompanies the article at the time of sale.

**Source:** Laws 1981, LB 487, § 14; R.S.1943, (1987), § 81-216.10; Laws 1991, LB 358, § 20.

**81-2,251.01 Limited food vending machine, defined.**

Limited food vending machine shall mean a vending machine which does not dispense potentially hazardous food.

**Source:** Laws 1999, LB 474, § 5.

**81-2,251.02 Licensed beverage establishment, defined.**

Licensed beverage establishment shall mean an establishment that serves alcoholic beverages and may or may not provide limited food service.

**Source:** Laws 1997, LB 199, § 11.

**81-2,251.03 Limited food service establishment, defined.**

Limited food service establishment shall mean an establishment that serves or otherwise provides only snack items or commercially prepared and wrapped foods that require little or no preparation.

**Source:** Laws 1997, LB 199, § 12.

**81-2,251.04 Mobile food unit, defined.**

Mobile food unit shall mean a vehicle mounted food establishment designed to be readily movable that returns to a commissary daily for cleanup and service.

**Source:** Laws 1997, LB 199, § 13.

**81-2,251.05 Person in charge, defined.**

Person in charge shall mean the individual who is responsible for the operation of the food establishment and who is present at the establishment or is readily accessible to communicate with employees and the regulatory authority.

**Source:** Laws 1997, LB 199, § 14.

**81-2,251.06 Pushcart, defined.**

Pushcart shall mean a non-self-propelled vehicle limited to serving food which is not potentially hazardous or commissary wrapped food maintained at temperatures in compliance with the Nebraska Pure Food Act or limited to the preparation and serving of frankfurters.

**Source:** Laws 1999, LB 474, § 6.

**81-2,252 Regulatory authority, defined.**

Regulatory authority shall mean the department or a political subdivision or state agency under contract with the department to perform regulatory functions authorized pursuant to the Nebraska Pure Food Act.

**Source:** Laws 1981, LB 487, § 16; R.S.1943, (1987), § 81-216.12; Laws 1991, LB 358, § 21; Laws 1999, LB 474, § 8.

**81-2,253 Repealed. Laws 1997, LB 199, § 63.**

**81-2,253.01 Salvage operation, defined.**

Salvage operation shall mean an operation which reconditions, sells, distributes, brokers, or otherwise supplies any distressed or salvaged food.

**Source:** Laws 1997, LB 199, § 15.

**81-2,254 Single event food vendor, defined.**

Single event food vendor shall mean a temporary food establishment that operates at no more than one event per calendar year for a period of no more than two days.

**Source:** Laws 2004, LB 1045, § 3.

**81-2,254.01 Temporary food establishment, defined.**

Temporary food establishment shall mean a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

**Source:** Laws 1997, LB 199, § 16.

**81-2,255 Repealed. Laws 1997, LB 199, § 63.**

**81-2,256 Repealed. Laws 1997, LB 199, § 63.**

**81-2,257 Priority items; designation.**

Priority items are designated in the Food Code and sections 81-2,272.10, 81-2,272.24, 81-2,272.25, and 81-2,272.27.

**Source:** Laws 1999, LB 474, § 19; Laws 2003, LB 250, § 6; Laws 2007, LB74, § 4; Laws 2012, LB771, § 3.

**81-2,257.01 Food Code; adoption.**

The Legislature hereby adopts by reference the Food Code as defined in section 81-2,244.01 as a part of the Nebraska Pure Food Act.

**Source:** Laws 1997, LB 199, § 17.

**81-2,258 Food Salvage Code; adoption.**

The Legislature hereby adopts by reference the Food Salvage Code as defined in section 81-2,247 as a part of the Nebraska Pure Food Act.

**Source:** Laws 1981, LB 487, § 21; R.S.1943, (1987), § 81-216.17; Laws 1991, LB 358, § 27; Laws 1997, LB 199, § 18.

**81-2,259 Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food; adoption.**

The Legislature hereby adopts by reference the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it existed on April 1, 2011.

**Source:** Laws 1999, LB 474, § 7; Laws 2012, LB771, § 4.

**81-2,260 Repealed. Laws 1997, LB 199, § 63.**

**81-2,261 Repealed. Laws 1997, LB 199, § 63.**

**81-2,262 Codes and practice; where filed.**

Certified copies of the codes and practice adopted by reference pursuant to sections 81-2,257.01 to 81-2,259, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

**Source:** Laws 1981, LB 487, § 24; R.S.1943, (1987), § 81-216.20; Laws 1991, LB 358, § 31; Laws 1997, LB 199, § 19; Laws 1999, LB 474, § 9.

**81-2,263 Inconsistencies; sections control.**

If there is an inconsistency between sections 81-2,239 to 81-2,292 and any of the codes adopted by reference, the requirements of the sections shall control.

**Source:** Laws 1991, LB 358, § 32; Laws 1997, LB 199, § 20; Laws 2003, LB 250, § 7.

**81-2,264 Repealed. Laws 1997, LB 199, § 63.**

**81-2,265 Repealed. Laws 1997, LB 199, § 63.**

**81-2,266 Repealed. Laws 1997, LB 199, § 63.**

**81-2,267 Food establishment, food processing plant, or salvage operation; construction, conversion, or remodeling; plans and specifications; requirements.**

Prior to construction of, conversion to, or remodeling of a food establishment, food processing plant, or salvage operation, properly prepared plans and specifications for such construction, conversion, or remodeling shall be submitted to the regulatory authority for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, type and model of proposed fixed equipment and facilities, and description of the type of food to be served or sold. The regulatory authority shall treat such plans and specifications as confidential or trade secret information and shall approve the plans and specifications if they meet the requirements of the Nebraska Pure Food Act. No food establishment, food processing plant, or salvage operation shall be constructed, converted, or remodeled except in accordance with plans and specifications approved by the regulatory authority. This section does not apply to food establishments which are temporary food establishments.

**Source:** Laws 1991, LB 358, § 36; Laws 1997, LB 199, § 21; Laws 2004, LB 1045, § 4.

**81-2,268 Food establishment, food processing plant, or salvage operation facilities and equipment; design and fabrication requirements.**

Food establishment, food processing plant, or salvage operation facilities and equipment in use or new facilities and equipment for which contractual obligations are incurred before September 13, 1997, and which do not meet fully all the design and fabrication requirements of the Nebraska Pure Food Act shall be acceptable if they are in good repair and capable of being maintained in a sanitary condition and the food-contact surfaces are of safe materials. A food establishment, food processing plant, or salvage operation which has a change of ownership or extensive remodeling after September 13, 1997, shall comply with all applicable facility and equipment requirements of the act.

**Source:** Laws 1991, LB 358, § 37; Laws 1997, LB 199, § 22.

**81-2,269 Repealed. Laws 1997, LB 199, § 63.**

**81-2,270 Food establishment, food processing plant, or salvage operation; permits; application; contents; fees; late fee; exemptions.**

(1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit or notifying the regulatory authority, the applicant shall pay an additional fee of sixty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (7) through (10) of this section and subsection (1) of section 81-2,281, a permitholder shall pay annual inspection fees on or before August 1 of each year regardless of when the initial permit was obtained.

(4)(a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (4)(b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between all categories.

(b) The maximum fees are:

Food Handling Activity	Initial Permit Fee	First Food Preparation Area Annual Inspection Fee	Additional Food Preparation Area Annual Inspection Fee (per area)	Unit Or Units Annual Inspection Fee
Convenience Store	\$86.19	\$86.19	\$43.09	N/A
Itinerant Food Vendor	\$86.19	\$86.19	\$43.09	N/A
Licensed Beverage Establishment	\$86.19	\$86.19	\$43.09	N/A
Limited Food Service Establishment	\$86.19	\$86.19	\$43.09	N/A
Temporary Food Establishment	\$86.19	\$86.19	\$43.09	N/A

Mobile Food Unit				
(for each unit)	\$86.19	N/A	N/A	\$43.09
Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
Vending Machine				
Operations:	\$86.19			
One to ten units		N/A	N/A	\$17.23
Eleven to twenty units		N/A	N/A	\$34.46
Twenty-one to thirty units		N/A	N/A	\$51.69
Thirty-one to forty units		N/A	N/A	\$68.92
Over forty units		N/A	N/A	\$86.15
Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
Commissary	\$86.19	\$120.64	\$43.09	N/A
All Other Food				
Establishments	\$86.19	\$120.64	\$43.09	N/A

(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) If a person fails to pay the inspection fee for more than one month after the fee is due, such person shall pay a late fee equal to fifty percent of the total fee for the first month that the fee is late and one hundred percent for the second month that the fee is late. The purpose of the late fee is to cover the administrative costs associated with collecting fees. All money collected as a late fee shall be remitted to the State Treasurer for credit to the Pure Food Cash Fund.

(7) An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (6) of this section.

(8) A person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act.

(9) A person holding a permit or license and regulated under the Nebraska Milk Act and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

(10) A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

**Source:** Laws 1981, LB 487, § 25; Laws 1982, LB 547, § 15; Laws 1985, LB 460, § 9; R.S.1943, (1987), § 81-216.21; Laws 1991, LB 358, § 39; Laws 1993, LB 121, § 526; Laws 1997, LB 199, § 23; Laws 1999, LB 474, § 10; Laws 2003, LB 250, § 8; Laws 2004, LB 1045, § 5; Laws 2007, LB74, § 5; Laws 2007, LB111, § 29; Laws 2012, LB771, § 5.

## Cross References

Nebraska Graded Egg Act, see section 2-3525.

Nebraska Milk Act, see section 2-3965.

**81-2,270.01 Repealed. Laws 2003, LB 250, § 29.**

**81-2,271 Food establishment, food processing plant, or salvage operation; permit; posting; change of ownership or location; duties; movement authorized; mobile food unit or pushcart; copy of permit.**

(1) The permit required by section 81-2,270 shall be posted in a location in the food establishment, food processing plant, or salvage operation which is conspicuous to the public. A salvage operation shall also have a copy of the permit in each vehicle.

(2) The permit is not transferable to any other person or location. Any permit issued lapses automatically upon a change of ownership or location except as provided in subsection (3) of this section. The permitholder shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. The permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive the 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.

(3) A mobile food unit, pushcart, or vending machine may be moved if the permitholder is able to provide the location of such unit, pushcart, or machine to the regulatory authority upon request and the person authorized by the permitholder to receive notices and orders of the department maintains a permanent mailing address on file with the department.

(4) Every mobile food unit or pushcart operator shall have a copy of their permit to operate available at the mobile food unit or pushcart when in operation.

**Source:** Laws 1991, LB 358, § 40; Laws 1997, LB 199, § 25; Laws 2012, LB771, § 6.

**81-2,272 Food establishment, food processing plant, or salvage operation; inspection; denial of permit; hearing.**

Before approving an application for a permit pursuant to section 81-2,270, the regulatory authority shall inspect the food establishment, food processing plant, or salvage operation to determine whether the applicant qualifies to hold a permit pursuant to subsection (1) of section 81-2,273. An applicant found to qualify to hold a permit pursuant to such subsection shall be issued a permit. An applicant who does not receive a permit shall be afforded the opportunity of a hearing to present evidence that the applicant is qualified to hold a permit pursuant to such subsection and should be issued a permit. All such hearings shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1991, LB 358, § 41; Laws 1997, LB 199, § 26.

## Cross References

Administrative Procedure Act, see section 84-920.

**81-2,272.01 Potentially hazardous food (time and temperature control for safety food); temperature; equipment.**

(1) Except during preparation, cooking, or cooling or when time is used as the public health control as specified under the Nebraska Pure Food Act and except as specified under subsection (2) of this section, potentially hazardous food (time and temperature control for safety food) shall be maintained:

(a) At one hundred thirty-five degrees Fahrenheit (fifty-seven degrees Celsius) or above, except that roasts cooked to a temperature and for a time specified in the Nebraska Pure Food Act or reheated as specified in the act may be held at a temperature of one hundred thirty degrees Fahrenheit (fifty-four degrees Celsius) or above; or

(b) At:

(i) Forty-one degrees Fahrenheit (five degrees Celsius) or less; or

(ii) Forty-five degrees Fahrenheit (seven degrees Celsius) or between forty-one degrees Fahrenheit (five degrees Celsius) and forty-five degrees Fahrenheit (seven degrees Celsius) in existing refrigeration equipment that is not capable of maintaining the food at forty-one degrees Fahrenheit (five degrees Celsius) or less if:

(A) The equipment is in place and in use in the food establishment; and

(B) Refrigeration equipment that is not capable of meeting a cold holding temperature of forty-one degrees Fahrenheit (five degrees Celsius) that is in use on March 8, 2012, shall, upon replacement of the equipment or at a change of ownership of the food establishment, be replaced with equipment that is capable of maintaining foods at forty-one degrees Fahrenheit (five degrees Celsius) or below.

(2) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (seven degrees Celsius) or less.

(3) Potentially hazardous food (time and temperature control for safety food) in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under subsection (1) of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified in the act.

**Source:** Laws 2012, LB771, § 7.

**81-2,272.02 Repealed. Laws 2012, LB 771, § 10.**

**81-2,272.03 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.04 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.05 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.06 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.07 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.08 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.09 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.10 Food employees; hand washing; food contact; restrictions.**

(1) Food employees shall wash their hands as specified in the Nebraska Pure Food Act.

(2) Food employees shall be trained to wash their hands as specified in the act.

(3) Except when washing fruits and vegetables, food employees shall minimize bare hand and arm contact with exposed food. This may be accomplished with the use of suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment.

(4) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if they have washed their hands as specified in the act prior to handling the food.

**Source:** Laws 1997, LB 199, § 35; Laws 2003, LB 250, § 9; Laws 2007, LB74, § 6.

**81-2,272.11 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.12 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.13 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.14 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.15 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.16 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.17 Repealed. Laws 2012, LB 771, § 10.**

**81-2,272.18 Repealed. Laws 2003, LB 250, § 29.**

**81-2,272.19 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.20 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.21 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.22 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.23 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.24 Potentially hazardous food; date marking; sale, consumption, or discard requirements.**

(1) Except when packaging food using a reduced oxygen packaging method as specified in section 81-2,272.27 and except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date of preparation. The food shall be sold, consumed on the premises, or discarded within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

(2) Except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and packaged by a food processing plant and held refrigerated at such food

establishment, shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date the food container was opened. The food shall be sold, consumed on the premises, or discarded within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

This subsection does not apply to fermented sausages which retain an original casing or shelf stable salt-cured products produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" or to shelf stable, dry, fermented sausages when the face has been cut, but the remaining portion is whole and intact.

(3) A refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(4) A date marking system that meets the criteria stated in subsections (1) and (2) of this section may include:

(a) Using a method approved by the regulatory authority for refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(b) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (1) of this section;

(c) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (2) of this section; or

(d) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, if the marking system is disclosed to the regulatory authority upon request.

(5) Subsections (1) and (2) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) Subsection (2) of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

(a) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad manufactured in accordance with 21 C.F.R. part 110, Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food, as such part existed on January 1, 2007;

(b) Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as cheddar, gruyere, parmesan and reggiano, and romano;

(c) Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as blue, edam, gorgonzola, gouda, and monterey jack;

(d) Cultured dairy products as defined in 21 C.F.R. part 131, Milk and cream, as such part existed on January 1, 2007, such as yogurt, sour cream, and buttermilk;

(e) Preserved fish products, such as pickled herring and dried or salted cod and other acidified fish products, as defined in 21 C.F.R. part 114, Acidified foods, as such part existed on January 1, 2007;

(f) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007, and which retain the original casing on the product; and

(g) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007.

**Source:** Laws 1997, LB 199, § 49; Laws 1999, LB 474, § 14; Laws 2003, LB 250, § 15; Laws 2007, LB74, § 8.

**81-2,272.25 Potentially hazardous food; discard; when.**

(1) A food specified under subsections (1) and (2) of section 81-2,272.24 shall be discarded if such food:

(a) Exceeds either of the temperature and time combinations specified in subsection (1) of section 81-2,272.24, except time that the food is frozen;

(b) Is in a container or package that does not bear a date or day; or

(c) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

(2) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control shall be discarded if it exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

**Source:** Laws 1997, LB 199, § 50; Laws 2003, LB 250, § 16; Laws 2007, LB74, § 9.

**81-2,272.26 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.27 Food establishment; reduced oxygen packaging method; when.**

A food establishment may use a reduced oxygen packaging method if a variance has been granted by the regulatory authority or under the following conditions:

(1) A food establishment shall only use a reduced oxygen packaging method with potentially hazardous food that does not support the growth of the bacteria *Clostridium botulinum* because it:

- (a) Has an AW (water activity) of ninety-one hundredths or less;
  - (b) Has a pH of four and six-tenths or less; or
  - (c) Is a meat product cured and processed in the food establishment that at the time of processing had a concentration of sodium nitrite of one hundred twenty milligrams per liter or higher and has a brine concentration of at least three and one-half percent.
- (2) A food with a high level of competing organisms such as raw meat, raw poultry, or semi-soft cheese containing live active starter culture organisms may be packaged using a reduced oxygen method. Such products shall be labeled with a “sell by” or “use by” date not to exceed fourteen days and shall be discarded if not sold by that date.
- (3) Products packaged using a reduced oxygen method shall be maintained at forty-one degrees Fahrenheit (five degrees Celsius) or below.
- (4) Except as provided in subdivision (2) of this section, products packaged using a reduced oxygen method shall be discarded if not sold within thirty days from processing if the food is processed at the food establishment. Food processed by a food processing plant that has been repackaged by the food establishment shall be discarded if not sold within fourteen days from packaging by the food establishment or the original manufacturers “sell by” or “use by” date, whichever occurs first.
- (5) Except as provided in subdivision (2) of this section, products packaged using a reduced oxygen method shall be labeled with a “sell by” or “use by” date which is not more than thirty days from the date it was processed by the food establishment. Food processed by a food processing plant that has been repackaged by the food establishment shall be labeled with a “sell by” or “use by” date which is not more than fourteen days from the date it was repackaged by the food establishment or the original manufacturer’s “sell by” or “use by” date, whichever occurs first.
- (6) Food establishments which process and package food using a reduced oxygen method shall have written policies for operational procedures that:
- (a) Prohibit contacting ready-to-eat foods with bare hands without proper handwashing;
  - (b) Identify a designated area for reduced oxygen packaging which separates raw foods and ready-to-eat foods to minimize cross contamination;
  - (c) Restrict access to the processing equipment to only responsible trained personnel familiar with the potential hazards of the operation; and
  - (d) Delineate cleaning and sanitation procedures for food contact surfaces.
- (7) Food establishments which package food using a reduced oxygen method shall have a training program to ensure that the individual responsible for the reduced oxygen packaging operation understands the requirements of the Nebraska Pure Food Act and the procedures, equipment, and facilities required for safe operation.
- (8) A food establishment shall not package fish using a reduced oxygen method unless the fish remains frozen before, during, and after packaging or a variance has been granted by the regulatory authority.

**Source:** Laws 1997, LB 199, § 52; Laws 2003, LB 250, § 17.

**81-2,272.28 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.29 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.30 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.31 Water supply; requirements.**

Except in response to a temporary interruption of a water supply in the food establishment, any food establishment which is not a mobile food unit or temporary food establishment shall:

- (1) Have water under pressure provided to all fixtures, equipment, and nonfood equipment that are required to use water;
- (2) Receive water through the use of an approved water main;
- (3) Have a permanent plumbing system; and
- (4) Have at least one toilet which is permanent, convenient, and accessible.

**Source:** Laws 2003, LB 250, § 19.

**81-2,272.32 Food employee; fingernail requirements.**

(1) Except as provided under subsection (2) of this section, a food employee shall keep his or her fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Unless wearing intact gloves in good condition, a food employee shall not wear fingernail polish or artificial fingernails when working with exposed food.

(2) This section does not apply to a food employee such as a counter staff person who only serves beverages and wrapped or packaged foods, a host staff person, or a wait staff person if he or she presents a minimal risk of contaminating exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

**Source:** Laws 2003, LB 250, § 22.

**81-2,272.33 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.34 Linens and cloth napkins; requirements.**

Except for raw dough being prepared prior to being cooked, linens and cloth napkins shall not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled. Linens and cloth napkins which are used in contact with food and cloth napkins used by consumers shall be laundered between each use.

**Source:** Laws 2003, LB 250, § 24.

**81-2,272.35 Repealed. Laws 2007, LB 74, § 12.**

**81-2,272.36 Repealed. Laws 2012, LB 771, § 10.**

**81-2,272.37 Repealed. Laws 2007, LB 74, § 12.**

**81-2,273 Permitholder; duties; disciplinary action; effect; hearing; reinstatement of permit.**

(1) A holder of a permit issued under the Nebraska Pure Food Act shall comply with the act, the rules and regulations adopted pursuant thereto, and

any order of the director issued pursuant thereto. 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 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 an order of probation should not be issued; and (c) the director finds that issuing an order of probation is appropriate based on the hearing record or on 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 on 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 food establishment, food processing plant, or salvage operation closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in or is caused by the permitholder's food establishment, food processing plant, or salvage operation; and (b) the permitholder receives the 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 shall 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 food establishment, food processing plant, or salvage operation for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any food establishment, food processing plant, or salvage operation for which the permit has been revoked shall close and remain closed until a new permit is issued.

(7) The director may terminate proceedings to suspend or revoke a permit or to subject a permitholder to an order of probation 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 an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from pursuing other civil or criminal actions.

**Source:** Laws 1991, LB 358, § 42; Laws 1997, LB 199, § 55.

**81-2,274 Notice or order; service; contents; hearings; procedure.**

(1) Any notice or order provided for in the Nebraska Pure Food 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) A notice to comply provided for in section 81-2,273 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 81-2,273. 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 probation, or that the permit may be suspended and the permitholder subject to an order of probation, 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 probation if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at the 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 81-2,273, 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 two 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 81-2,273, 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 358, § 43.

**Cross References**

Administrative Procedure Act, see section 84-920.

**81-2,275 Food establishment, food processing plant, or salvage operation; unlawful operation.**

It is unlawful for a person to operate a food establishment, food processing plant, or salvage operation in any manner which is not in conformity with the Nebraska Pure Food Act or the rules and regulations adopted and promulgated pursuant thereto or to interfere with the duties of the department or any final order of the director pursuant to such act.

**Source:** Laws 1991, LB 358, § 44; Laws 1997, LB 199, § 56.

**81-2,276 Food establishment, food processing plant, or salvage operation regulation.**

It is the responsibility of the department to regulate the operation of food establishments, food processing plants, and salvage operations in the manner set out in the Nebraska Pure Food Act.

**Source:** Laws 1981, LB 487, § 26; R.S.1943, (1987), § 81-216.22; Laws 1991, LB 358, § 45; Laws 1997, LB 199, § 57.

**81-2,277 Food processing plants; compliance required.**

Food processing plants shall comply with the federal Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it existed on April 1, 2011.

**Source:** Laws 1999, LB 474, § 15; Laws 2012, LB771, § 8.

**81-2,278 Repealed. Laws 1997, LB 199, § 63.**

**81-2,279 Repealed. Laws 1997, LB 199, § 63.**

**81-2,280 Repealed. Laws 1997, LB 199, § 63.**

**81-2,281 Department; enforce act; contract for conduct of certain regulatory functions; exemption from inspection fee; inspections; how conducted; by whom.**

(1) The department shall enforce the Nebraska Pure Food Act. The department may contract with any political subdivision or state agency it deems qualified to conduct any or all regulatory functions authorized pursuant to the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the inspection fees prescribed in section 81-2,270 if such holders pay license or inspection fees to the political subdivision performing the inspections.

(2) It shall be the responsibility of the regulatory authority to inspect food establishments and food processing plants as often as required by the act. An inspection of a salvage operation shall be performed at least once every three

hundred sixty-five days of operation. Additional inspections shall be performed as often as is necessary for the efficient and effective enforcement of the act.

(3) All inspections conducted pursuant to the act shall be performed by persons who are provisional environmental health specialists or registered environmental health specialists as defined in section 38-1305 or 38-1306.

(4) Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments, food processing plants, or salvage operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to pay for samples taken. The authorized personnel shall also have access to the records of salvage operations pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

(5) Regulatory activities performed by a political subdivision or state agency under contract shall conform with the provisions of the act and such activities shall have the same effect as those performed by the department. Any interference with the regulatory authority's duty to inspect shall be an interference with the department's duties for the purposes of section 81-2,273.

**Source:** Laws 1981, LB 487, § 31; Laws 1991, LB 703, § 66; R.S.1943, (1987), § 81-216.27; Laws 1991, LB 358, § 50; Laws 1997, LB 199, § 58; Laws 1999, LB 474, § 16; Laws 2007, LB463, § 1311.

**81-2,282 Adulteration of food; prohibited; adulteration, defined.**

(1) It shall be unlawful for any person to adulterate any food or for any person to manufacture, distribute, offer for sale, or sell any adulterated food.

(2) Food shall be deemed to be adulterated if:

(a) It bears or contains any substance which may render it injurious to health, considering the quantity of such substance in or on the food;

(b) It consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance or is otherwise unsafe for use as food;

(c) It has been manufactured, processed, packaged, stored, or held under insanitary conditions where it may have become unsafe for use as food;

(d) It is the product of a diseased animal or one that has died by any means other than slaughter;

(e) Its container is so constructed as to render the food unsafe or otherwise injurious to health; or

(f) Any valuable constituent of the food has been wholly or partially omitted or abstracted.

**Source:** Laws 1981, LB 487, § 32; R.S.1943, (1987), § 81-216.28; Laws 1991, LB 358, § 51.

**81-2,283 Misbranded food; prohibited; misbranded, defined.**

(1) It shall be unlawful for any person to misbrand any food or distribute, offer for sale, or sell any misbranded food.

(2) A food shall be deemed to be misbranded if:

(a) It does not bear labeling clearly stating (i) the identity of the food in terms likely to be easily and accurately understood by the consumer, (ii) the net quantity of contents of the food in terms authorized under the Weights and Measures Act, and (iii) the name and address of the manufacturer, distributor, or seller of the food; or

(b) Its labeling is false or misleading in any manner.

**Source:** Laws 1981, LB 487, § 33; Laws 1991, LB 356, § 3; R.S.1943, (1987), § 81-216.29; Laws 1991, LB 358, § 52.

**Cross References**

**Weights and Measures Act**, see section 89-182.01.

**81-2,284 Deceptive packaging of food; prohibited; deceptively packed or packaged, defined.**

(1) It shall be unlawful for any person to deceptively pack or package any food or for any person to distribute, offer for sale, or sell any food that has been deceptively packed or packaged.

(2) A food shall be deemed to be deceptively packed or packaged if:

(a) Any substance has been added to, mixed with, or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear to be better or of greater value than it actually is; or

(b) Any inferiority or damage to the food has been concealed in any manner.

**Source:** Laws 1981, LB 487, § 34; Laws 1991, LB 356, § 4; R.S.1943, (1987), § 81-216.30; Laws 1991, LB 358, § 53; Laws 1997, LB 199, § 59.

**81-2,285 False advertisement regarding food; prohibited; false advertisement, defined.**

(1) It shall be unlawful for any person engaged in the sale, merchandising, or distribution of food to cause, with intent to deceive, the dissemination of a false advertisement regarding a food.

(2) An advertisement of a food shall be deemed to be false if it is false or misleading in any manner, including the following:

(a) The advertising of food as that of another;

(b) The advertising of food in a manner causing the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of such food;

(c) The advertising of food in a manner causing the likelihood of confusion or misunderstanding as to affiliation, connection, or association with or certification by another;

(d) The advertisement of food by use of deceptive representations or deceptive designation of geographic origin in connection with such food;

(e) The advertisement of food by way of representations that the food has sponsorship, approval, characteristics, ingredients, benefits, uses, or qualities that it does not have or that a person or company has a sponsorship, approval status, affiliation, or connection that he, she, or it does not have;

(f) The advertisement of food by way of a representation that the food is of a particular standard, quality, or grade when it is not;

(g) The advertisement of food by disparaging the food of another by false or misleading representations of fact;

(h) The advertisement of food with an intent not to sell it as advertised or an intent to sell an alternative food in substitution for the advertised food;

(i) The advertisement of food with the intent not to supply a reasonably expectable public demand unless the advertisement imposes a limitation of quantity; or

(j) The advertisement of food by making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

**Source:** Laws 1981, LB 487, § 35; Laws 1982, LB 547, § 16; R.S.1943, (1987), § 81-216.31; Laws 1991, LB 358, § 54.

**81-2,286 Regulatory authority; determination of violations; use of federal regulations; when.**

In determining whether food is being manufactured, processed, transported, distributed, offered for sale, or sold in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions of sections 81-2,282 to 81-2,285 or any other requirement of the Nebraska Pure Food Act which affects such food, the regulatory authority may utilize the appropriate definitions, standards, tolerances, standards of identity, standards of quality, or standards of fill of containers set out in the duly promulgated federal regulations applicable to food and food products if the regulatory authority finds that such federal regulations will adequately protect against the adulteration, misbranding, deceptive packaging, and false advertising of foods.

**Source:** Laws 1981, LB 487, § 36; R.S.1943, (1987), § 81-216.32; Laws 1991, LB 358, § 55.

**81-2,287 Regulatory authority; enforcement; issue stop-sale, stop-use, removal orders; procedure.**

If a regulatory authority finds that food is being manufactured, processed, distributed, offered for sale, or sold in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions of sections 81-2,282 to 81-2,285 or any other requirement of the Nebraska Pure Food Act which affects such food, such regulatory authority may issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such food if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. No food subject to any such order shall be used, sold, or moved without permission from the regulatory authority. Such an order shall specifically describe the nature of the violation found and the precise actions needed to be taken to bring the food into compliance with the applicable provisions of the act. Such order shall clearly advise the person in charge of the food that he or she may request an immediate hearing before the director or his or her designee on the matter. No such order may direct the involuntary and immediate disposal or destruction of any food until the person in charge of such food has been afforded an opportunity to be heard on the matter and an opportunity to appeal any order of the director or his or her designee from such a hearing in accordance with the Administrative Procedure Act. The regulatory

authority may issue a stop-sale, stop-use, or removal order against articles of food that are perishable, even if the practical result of such an order is to bring about the involuntary disposal of such food, when, in the opinion of the person issuing the order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

**Source:** Laws 1981, LB 487, § 37; Laws 1988, LB 352, § 165; R.S.Supp.,1990, § 81-216.33; Laws 1991, LB 358, § 56.

Cross References

Administrative Procedure Act, see section 84-920.

**81-2,288 Department; adopt rules and regulations; contracts with federal agencies authorized; exemptions from act.**

(1) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of the Nebraska Pure Food Act.

(2) The department may contract with agencies of the federal government for the performance by the department of inspections and other regulatory functions at food establishments, food processing plants, or salvage operations within the state which are subject to federal jurisdiction and may receive federal funds for work performed under such contracts.

(3) Except as provided in subsection (2) of this section, the provisions of the act shall not apply to establishments or specific portions of establishments regularly inspected for proper sanitation by an agency of the federal government.

**Source:** Laws 1981, LB 487, § 38; R.S.1943, (1987), § 81-216.34; Laws 1991, LB 358, § 57; Laws 1997, LB 199, § 60.

**81-2,288.01 Regulatory authority; inspection reporting requirements.**

(1) The regulatory authority shall document on an inspection report form:

(a) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, status of the permit, and personnel certificates that may be required;

(b) Specific factual observations of violative conditions, omissions, or other deviations from the requirements of the Nebraska Pure Food Act that require correction by the permitholder; and

(c) Whether the violations listed are critical or repeated.

(2) The regulatory authority shall specify on the inspection report form the timeframe for correction of the violations as specified in the Nebraska Pure Food Act.

(3) All procedures and requirements related to the inspection of food establishments in the act apply to food processing plants and salvage operations.

(4) The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

**Source:** Laws 1997, LB 199, § 61; Laws 1999, LB 474, § 17.

**81-2,288.02 Regulatory authority; inspection intervals.**

The regulatory authority may increase the interval between inspections beyond six months if the food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.

**Source:** Laws 1999, LB 474, § 18.

**81-2,289 Restraining orders and injunctions; department; county attorney; duties.**

(1) The department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate the Nebraska Pure Food Act, the rules and regulations adopted pursuant to the act, or a final order of the director. The district court of the county where the violation 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 county attorney of the county in which any violation of the act occurs or is about to occur, when notified of such violation or threatened violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

**Source:** Laws 1981, LB 487, § 39; R.S.1943, (1987), § 81-216.35; Laws 1991, LB 358, § 58.

**81-2,290 Violations; penalty; county attorney; duties.**

(1) Any person violating any provision of the Nebraska Pure Food Act, the rules and regulations adopted pursuant to the act, or a final order of the director shall be guilty of a Class IV misdemeanor notwithstanding the existence of any other remedy at law.

(2) It shall be the duty of the county attorney of the county in which any violation of the Nebraska Pure Food Act occurs or is about to occur, when notified of such violation by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in a court of competent jurisdiction.

**Source:** Laws 1981, LB 487, § 40; R.S.1943, (1987), § 81-216.36; Laws 1991, LB 358, § 59.

**81-2,291 Pure Food Cash Fund; created; use; investment.**

All fees paid to the department in accordance with the Nebraska Pure Food Act shall be remitted to the State Treasurer. The State Treasurer shall credit the fees to the Pure Food Cash Fund, which fund is hereby created. All money credited to such fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature.

Any money in the Pure Food 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 1981, LB 487, § 41; R.S.1943, (1987), § 81-216.37; Laws 1991, LB 358, § 60; Laws 1994, LB 1066, § 98; Laws 2009, First Spec. Sess., LB3, § 64.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-2,292 Bed and breakfast establishments; exempt from act.**

The Nebraska Pure Food Act shall not apply to bed and breakfast establishments.

**Source:** Laws 1989, LB 548, § 1; R.S.Supp.,1990, § 81-216.38; Laws 1991, LB 358, § 61.

## (y) LABORATORY TESTING SERVICES

**81-2,293 Laboratory testing services; system of billing; Agricultural Laboratory Testing Services Cash Fund; created; use; investment.**

(1) The Department of Agriculture may contract with the following entities to perform laboratory testing services for such entities: Any agency, board, commission, or political subdivision of this or another state, another state, the federal government, or an association which includes members that are governmental entities. Laboratory testing services authorized by this section shall not be performed beyond the scope of the Department of Agriculture's statutory authority and shall be limited to one or more of the following: (a) Acts of terrorism, natural disaster, or other public health or agricultural emergency; (b) testing performed in accordance with intergovernmental agreements for laboratory testing services; and (c) testing performed in connection with validation studies for analytical techniques and methods developed by entities whose function is establishing or approving official laboratory analytical standards. Every department contract to perform laboratory testing services shall include provisions clearly stating that the State of Nebraska shall not be liable to any party to the contract or to any third person for negligence of the department in analyzing samples or in publishing testing findings that result in injury to persons or damage to property.

(2) The department shall develop an equitable system of billing and charges for the laboratory testing services. Such charges shall reflect, as nearly as practicable, the actual costs incurred in performing the services.

(3) The Agricultural Laboratory Testing Services Cash Fund is created. All gifts and grants relating to this section from any source, including federal, state, public, or private sources, and charges collected for laboratory testing services shall be remitted to the State Treasurer for credit to the fund. The department shall use the fund to carry out 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.

**Source:** Laws 2005, LB 51, § 2.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 3

## DEPARTMENT OF BANKING AND FINANCE

## Cross References

Department of Banking and Finance, powers and duties with respect to:

Bank holding companies, see section 8-908 et seq.  
 Banks, generally, see section 8-101 et seq.  
 Building and loan associations, see section 8-301 et seq.  
 Consumer Rental Purchase Agreement Act, see section 69-2101.  
 Credit Union Act, see section 21-1701 et seq.  
 Financial institutions, assessments and fees, see section 8-601 et seq.  
 Loans, generally, see Chapter 45.  
 Trust companies, see section 8-201 et seq.

## (a) GENERAL POWERS

## Section

81-301. Department of Banking and Finance; general powers.

## (b) DEPARTMENT OF BANKING AND FINANCE SETTLEMENT CASH FUND

81-302. Department of Banking and Finance Settlement Cash Fund; created; use; investment.

## (a) GENERAL POWERS

**81-301 Department of Banking and Finance; general powers.**

The Governor, through the agency of the Director of Banking and Finance, is vested with the power to regulate, supervise, and shall have general control over trade and commerce of the state and in addition to such general powers herein conferred, he is vested with the power and charged with the duty of enforcing, through the agency of the director, all of the provisions of Chapter 8. The Department of Banking and Finance shall collect, collate, assort, systematize and report statistical details of the manufacturing industries and commerce of the state, and shall acquire information and report upon the general conditions so far as production is concerned of the leading industries of the state.

**Source:** Laws 1919, c. 190, tit. V, art. I, § 1, p. 572; C.S.1922, § 7742; C.S.1929, § 81-3401; R.S.1943, § 81-301; Laws 1969, c. 778, § 3, p. 2951; Laws 1976, LB 561, § 6.

Suit instituted by Department of Insurance against citizens of another state, to recover assets of insolvent surety company in charge of department, is suit by state, and not within jurisdiction of federal court. *Hertz v. Knudson*, 6 F.2d 812 (8th Cir. 1925).

(b) DEPARTMENT OF BANKING AND FINANCE  
SETTLEMENT CASH FUND**81-302 Department of Banking and Finance Settlement Cash Fund; created; use; investment.**

The Department of Banking and Finance Settlement Cash Fund is created. The fund shall be administered by the Department of Banking and Finance. The fund shall consist of money received by the state in settlements resulting from regulatory or judicial resolution of financial, securities, or consumer issues in which the department is designated as a recipient and any investment income 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. The fund may be used by the Department of Banking and Finance for any allowable legal purposes as determined by the Director of Banking and Finance. 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 2013, LB199, § 14.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 4

## DEPARTMENT OF LABOR

## Cross References

Department of Labor, powers and duties generally, see Chapter 48.

## Section

81-401. Department of Labor; general powers.

81-402. Division of Safety; employees; merit system; Commissioner of Labor; provide.

81-403. Department of Labor; educational opportunities for youth; identify resources.

81-404. Transferred to section 48-2213.

81-405. Mechanical Safety Inspection Fund; created; use; investment.

**81-401 Department of Labor; general powers.**

The Governor, through the agency of the Department of Labor created by section 81-101, shall have power:

(1) To foster, promote, and develop the welfare of wage earners;

(2) To improve working conditions;

(3) To advance opportunities for profitable employment;

(4) To collect, collate, assort, systematize, and report statistical details relating to all departments of labor, especially in its relation to commercial, industrial, social, economic, and educational conditions and to the permanent prosperity of the manufacturing and productive industries;

(5) To acquire and distribute useful information on subjects connected with labor in the most general and comprehensive sense of the word;

(6) To acquire and distribute useful information concerning the means of promoting the material, social, intellectual, and moral prosperity of laboring men and women;

(7) To acquire and distribute information as to the conditions of employment and such other facts as may be deemed of value to the industrial interests of the state;

(8) To acquire and distribute information in relation to the prevention of accidents, occupational diseases, and other related subjects;

(9) To acquire and distribute useful information regarding the role of the part-time labor force and the manner in which such labor force affects the economy and citizens of the state; and

(10) To administer and enforce all of the provisions of the Boiler Inspection Act, the Employment Security Law, the Farm Labor Contractors Act, the Nebraska Amusement Ride Act, the Nebraska Workforce Investment Act, and the Wage and Hour Act and Chapter 48, articles 2, 3, 4, and 5, and for that purpose there is imposed upon the Commissioner of Labor the duty of executing all of the provisions of such acts, law, and articles.

**Source:** Laws 1919, c. 190, tit. IV, art. I, § 1, p. 545; C.S.1922, § 7654; C.S.1929, § 81-2901; Laws 1935, c. 57, § 37, p. 207; C.S.Supp.,1941, § 81-2901; R.S.1943, § 81-401; Laws 1993, LB 334, § 1; Laws 2001, LB 193, § 13.

## Cross References

**Boiler Inspection Act**, see section 48-719.

**Employment Security Law**, see section 48-601.

**Farm Labor Contractors Act**, see section 48-1701.

**Nebraska Amusement Ride Act**, see section 48-1801.

**Nebraska Workforce Investment Act**, see section 48-1616.

**Wage and Hour Act**, see section 48-1209.

Matters of fair employment practices and civil rights are matters of statewide and not local concern. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

**81-402 Division of Safety; employees; merit system; Commissioner of Labor; provide.**

The Commissioner of Labor shall, in the manner provided in section 48-609, provide a merit system for the appointment, promotion, and demotion of employees of the Division of Safety of the Department of Labor. Any employee of the division on December 25, 1969, other than a probationary employee, shall be deemed to have qualified under the merit system for the position then held.

**Source:** Laws 1969, c. 803, § 1, p. 3027.

**81-403 Department of Labor; educational opportunities for youth; identify resources.**

The Department of Labor shall review current programs, policies, and funding sources to identify available resources that may provide educational opportunities for youth. Such opportunities shall include training and job experience in the repair and alteration of public buildings as may be necessary to comply with the requirements of the federal Americans with Disabilities Act of 1990.

**Source:** Laws 1994, LB 988, § 44.

**81-404 Transferred to section 48-2213.**

**81-405 Mechanical Safety Inspection Fund; created; use; investment.**

The Mechanical Safety Inspection Fund is created. All fees collected by the Department of Labor pursuant to the Nebraska Amusement Ride Act and the Conveyance Safety Act shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund. Fees so collected shall not lapse into the General Fund. Fees so collected shall be used for the sole purpose of administering the provisions of the Nebraska Amusement Ride Act and the Conveyance Safety Act. Any money in the Mechanical Safety Inspection 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 funds existing in the Elevator Inspection Fund and the Nebraska Amusement Ride Fund on January 1, 2008, shall be transferred to the Mechanical Safety Inspection Fund.

**Source:** Laws 2007, LB265, § 24.

## Cross References

**Conveyance Safety Act**, see section 48-2501.

**Nebraska Amusement Ride Act**, see section 48-1801.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

## STATE ADMINISTRATIVE DEPARTMENTS

### ARTICLE 5

#### STATE FIRE MARSHAL

##### (a) DEPARTMENT OF INSURANCE; GENERAL POWERS

###### Section

81-501. Transferred to section 44-101.01.

##### (b) GENERAL PROVISIONS

81-501.01. State Fire Marshal; powers and duties; appointment; confirmation by Legislature; removal.

81-502. State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel; rules and regulations; compliance; late penalty.

81-502.01. Nebraska Fire Safety Appeals Board; members; appointment; qualifications; term.

81-502.02. Nebraska Fire Safety Appeals Board; duties; expenses; meetings.

81-502.03. Nebraska Fire Safety Appeals Board; disagreement; hearing; notice; decision; written report prior to order; exception.

81-502.04. Rules and regulations; enforcement; procedure.

81-503. State Fire Marshal; first assistant; appointment; other employees; duties; uniforms.

81-503.01. Repealed. Laws 1959, c. 266, § 1.

81-504. State Fire Marshal; legal counsel; appointment by Attorney General; compensation.

81-505. First assistant and deputies; duties.

81-505.01. State Fire Marshal; establish and assess fees; procedures.

81-506. Fires; investigation by city or county authorities; reports to State Fire Marshal required.

81-507. State Fire Marshal; records and statistics on fires required.

81-508. State Fire Marshal; arson; investigations; evidence.

81-509. State Fire Marshal; investigations; witnesses; subpoena; oath; perjury; contempt.

81-510. State Fire Marshal; investigations; witnesses; disobedience of subpoena or contumacy; penalty.

81-511. Buildings; entry and inspection by State Fire Marshal; when authorized.

81-512. Buildings; entry and inspection; when authorized.

81-513. Buildings; condemnation or order to repair; conditions; power of State Fire Marshal; violation of order; penalty.

81-514. Buildings; exits and fire escapes.

81-515. Buildings; condemnation or repair orders; filing in district court; enforcement.

81-516. Buildings; condemnation or repair orders; service upon owner and tenant.

81-517. Buildings; condemnation or repair orders; objections; filing; service; hearing.

81-518. Buildings; condemnation or repair orders; time and place of hearing; jurisdiction of district court.

81-519. Buildings; condemnation order; demolition or repair by State Fire Marshal; when authorized; expense; collection.

81-520. Buildings; fire hazards; abatement; penalty.

81-520.01. Statewide open burning ban; waiver; permit; fee.

81-520.02. Open burning ban; range-management burning; violations; penalty.

81-520.03. Land-management burning, defined; fire chief of local fire department; designate member of department.

81-520.04. Land-management burning; permit; issuance; when.

81-520.05. Land-management burning; application for permit; plan; contents; fire chief; duties.

81-521. Fire insurance companies; reports to State Fire Marshal required; copies mailed to fire department of certain cities.

81-522. Fires; failure of city or county authorities to investigate and report; penalty.

81-523. State Fire Marshal; office; support and maintenance; tax on fire insurance companies; rate.

## STATE FIRE MARSHAL

### Section

- 81-524. State Fire Marshal; office; salaries; expenses; payment.
- 81-525. State Fire Marshal; records public; exceptions.
- 81-526. State Fire Marshal; investigations; duty of county attorney to act.
- 81-527. State Fire Marshal; schools; exits; fire drills.
- 81-528. State Fire Marshal Cash Fund; created; use; investment.
- 81-529. Sections, how construed.
- 81-530. Repealed. Laws 1981, LB 545, § 52.
- 81-531. Fire chiefs; local officers; fire reports; compensation; mileage.
- 81-532. Repealed. Laws 1985, LB 40, § 2.
- 81-533. Repealed. Laws 1985, LB 40, § 2.
- 81-534. Hotels and apartments more than fifty-five feet in height; standpipes; specifications.
- 81-535. Repealed. Laws 1985, LB 40, § 2.
- 81-536. Repealed. Laws 1985, LB 40, § 2.
- 81-537. Repealed. Laws 1985, LB 40, § 2.
- 81-538. Violations; penalty.
- 81-539. Repealed. Laws 1988, LB 893, § 18.
- 81-540. Repealed. Laws 1988, LB 893, § 18.
- 81-541. Repealed. Laws 1988, LB 893, § 18.
- 81-541.01. High-rise building fire code; adoption; State Fire Marshal; duties.

### (c) NATURAL GAS PIPELINE SAFETY

- 81-542. Terms, defined.
- 81-543. State Fire Marshal; safety standards for transportation of gas and operation of pipeline facilities; adopt waiver of compliance; conditions.
- 81-544. State Fire Marshal; certifications and reports to the United States Secretary of Transportation.
- 81-545. Transportation of gas; operation of pipeline facilities; safety standards; requirements.
- 81-546. Transportation of gas; operation of pipeline facilities; violations; notice; failure to comply; penalty; considerations.
- 81-547. Transportation of gas; operation of pipeline facilities; violations; district court; jurisdiction.
- 81-548. Transportation of gas; operation of pipeline facilities; plan for inspection and maintenance; file with State Fire Marshal; adequacy of plan.
- 81-549. Transportation of gas; operation of pipeline facilities; records; reports; inspection; State Fire Marshal; duties; confidential information.
- 81-550. Nebraska Natural Gas Pipeline Safety Cash Fund; created; use; investment; assessments.
- 81-551. State Fire Marshal; duties; powers.
- 81-552. Act, how cited.

### (d) STATE ELECTRICAL DIVISION

- 81-553. Repealed. Laws 1975, LB 525, § 45.
- 81-554. Repealed. Laws 1975, LB 525, § 45.
- 81-555. Repealed. Laws 1975, LB 525, § 45.
- 81-556. Repealed. Laws 1975, LB 525, § 45.
- 81-557. Repealed. Laws 1975, LB 525, § 45.
- 81-558. Repealed. Laws 1975, LB 525, § 45.
- 81-559. Repealed. Laws 1975, LB 525, § 45.
- 81-560. Repealed. Laws 1975, LB 525, § 45.
- 81-561. Repealed. Laws 1975, LB 525, § 45.
- 81-562. Repealed. Laws 1975, LB 525, § 45.
- 81-563. Repealed. Laws 1975, LB 525, § 45.
- 81-564. Repealed. Laws 1975, LB 525, § 45.
- 81-565. Repealed. Laws 1975, LB 525, § 45.
- 81-566. Repealed. Laws 1975, LB 525, § 45.
- 81-567. Repealed. Laws 1975, LB 525, § 45.
- 81-568. Repealed. Laws 1975, LB 525, § 45.
- 81-569. Repealed. Laws 1975, LB 525, § 45.
- 81-570. Repealed. Laws 1975, LB 525, § 45.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

#### (e) STATE ELECTRICAL ACT

- 81-571. Transferred to section 81-2101.
- 81-572. Transferred to section 81-2102.
- 81-573. Transferred to section 81-2103.
- 81-574. Transferred to section 81-2145.
- 81-575. Transferred to section 81-2104.
- 81-576. Transferred to section 81-2105.
- 81-577. Transferred to section 81-2106.
- 81-578. Transferred to section 81-2107.
- 81-579. Transferred to section 81-2108.
- 81-580. Transferred to section 81-2109.
- 81-581. Transferred to section 81-2110.
- 81-582. Transferred to section 81-2111.
- 81-583. Transferred to section 81-2112.
- 81-584. Transferred to section 81-2113.
- 81-585. Transferred to section 81-2114.
- 81-586. Transferred to section 81-2115.
- 81-587. Transferred to section 81-2116.
- 81-588. Transferred to section 81-2117.
- 81-589. Transferred to section 81-2118.
- 81-590. Transferred to section 81-2119.
- 81-591. Transferred to section 81-2120.
- 81-592. Transferred to section 81-2121.
- 81-593. Transferred to section 81-2122.
- 81-593.01. Transferred to section 81-2123.
- 81-594. Transferred to section 81-2124.
- 81-595. Transferred to section 81-2125.
- 81-596. Transferred to section 81-2126.
- 81-597. Transferred to section 81-2127.
- 81-598. Transferred to section 81-2128.
- 81-599. Transferred to section 81-2129.
- 81-5,100. Transferred to section 81-2130.
- 81-5,101. Transferred to section 81-2131.
- 81-5,102. Transferred to section 81-2132.
- 81-5,103. Transferred to section 81-2133.
- 81-5,104. Transferred to section 81-2134.
- 81-5,105. Transferred to section 81-2135.
- 81-5,106. Transferred to section 81-2136.
- 81-5,107. Transferred to section 81-2137.
- 81-5,108. Transferred to section 81-2138.
- 81-5,109. Transferred to section 81-2139.
- 81-5,110. Transferred to section 81-2140.
- 81-5,111. Transferred to section 81-2141.
- 81-5,112. Transferred to section 81-2142.
- 81-5,113. Transferred to section 81-2143.
- 81-5,114. Transferred to section 81-2144.

#### (f) ARSON REPORTING IMMUNITY ACT

- 81-5,115. Act, how cited.
- 81-5,116. Definitions; sections found.
- 81-5,117. Authorized agency, defined.
- 81-5,118. Relevant, defined.
- 81-5,119. Action, defined.
- 81-5,120. Immune, defined.
- 81-5,121. Authorized agency; fire or explosion loss; access to information.
- 81-5,122. Fire or explosion loss; request for information; subject matter.
- 81-5,123. Fire or explosion loss; investigation; when.
- 81-5,124. Authorized agency; information; release; to whom.
- 81-5,125. Insurance company; request for information; effect.
- 81-5,126. Insurance company; release of information; immune from liability.

## Section

- 81-5,127. Authorized agency; insurance company; information; confidentiality; testimony.
- 81-5,128. Information; refusal to release; prohibited.
- 81-5,129. Relevant information; refusal to provide; prohibited.
- 81-5,130. Confidential information; release; prohibited.
- 81-5,131. Violations; penalties.

## (g) SMOKE DETECTORS

- 81-5,132. Definitions, sections found.
- 81-5,133. Apartment house, defined.
- 81-5,134. Dwelling, defined.
- 81-5,135. Dwelling unit, defined.
- 81-5,136. Hotel, defined.
- 81-5,137. Lodging house, defined.
- 81-5,138. Mobile home, defined.
- 81-5,139. Remodeled, defined.
- 81-5,140. Certain mobile homes and modular housing units; exemption.
- 81-5,141. Adopt rules and regulations; administration of law; investigate violations.
- 81-5,142. Smoke detectors; installation required; when.
- 81-5,143. Smoke detector; number; location; operation.
- 81-5,144. Smoke detector; rental property; responsibility for installing, maintaining, and testing; procedure.
- 81-5,145. Political subdivisions; smoke detector standards; restrictions.
- 81-5,146. Violations; penalty.

## (h) ACCESSIBILITY STANDARDS

- 81-5,147. Buildings and facilities; standards, specifications, and exclusions; adoption.
- 81-5,148. Enforcement of standards and specifications; responsibility; failure to comply; effect.
- 81-5,149. Repealed. Laws 2002, LB 93, § 27.
- 81-5,150. Repealed. Laws 2002, LB 93, § 27.

## (i) TRAINING DIVISION

- 81-5,151. Training division; established; purpose; State Fire Marshal; powers and duties.
- 81-5,152. Training program; fees.
- 81-5,153. Training Division Cash Fund; created; use; investment.
- 81-5,154. Repealed. Laws 2002, LB 93, § 27.
- 81-5,155. Repealed. Laws 2002, LB 93, § 27.
- 81-5,156. Repealed. Laws 2002, LB 93, § 27.
- 81-5,157. Fire Service and Safety Training Program; transfer to State Fire Marshal; personnel, records, and other property; transfer.

## (j) FIRE PROTECTION SYSTEMS

- 81-5,158. Terms, defined.
- 81-5,159. Contractor certificate; required; application; fee; examination; renewal; responsible managing employee.
- 81-5,160. Contractor; insurance required.
- 81-5,161. Sections; how construed.
- 81-5,162. Fees; penalties; distribution.
- 81-5,163. Violation; penalties.
- 81-5,164. Rules and regulations.

## (a) DEPARTMENT OF INSURANCE; GENERAL POWERS

**81-501 Transferred to section 44-101.01.**

## (b) GENERAL PROVISIONS

**81-501.01 State Fire Marshal; powers and duties; appointment; confirmation by Legislature; removal.**

The Governor shall, with the advice and consent of the Legislature, appoint a State Fire Marshal who shall, under the general direction and supervision of the Governor, perform the duties and exercise the powers and have the rights and privileges conferred by sections 81-501.01 to 81-531 and 81-515.1 to 81-515.7. He or she may be removed from office at the pleasure of the Governor.

**Source:** Laws 1925, c. 183, § 1, p. 479; C.S.1929, § 81-5501; R.S.1943, § 81-501; Laws 1974, LB 622, § 1; Laws 1993, LB 348, § 78.

**81-502 State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel; rules and regulations; compliance; late penalty.**

(1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed foster care facilities or applicants for licenses for foster care facilities, upon request by the Department of Health and Human Services, pursuant to section 71-1903;

(iii) Upon request of the Department of Health and Human Services, licensed providers of programs or applicants for licenses to provide such programs pursuant to section 71-1913 and licensed residential child-caring agencies or applicants for such licensure pursuant to section 71-1934. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other health care facilities which are licensed under the Health Care Facility Licensure Act or applicants for licenses for such facilities or institutions, upon request by the Department of Health and Human Services, pursuant to section 71-441; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health and Human Services, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data, to adopt, promulgate, alter, and enforce, through inspections and code compliance, orders, rules, and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and fireworks;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, stor-

age, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(v) Chemicals, prozilin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist;

(vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(vii) Accessibility standards and specifications adopted pursuant to section 81-5,147.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to the Arson Reporting Immunity Act, the Nebraska Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to 81-541.01, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 and as may be conferred and imposed by law.

(5) The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.

**Source:** Laws 1925, c. 183, § 2, p. 479; C.S.1929, § 81-5502; R.S.1943, § 81-502; Laws 1947, c. 313, § 1, p. 949; Laws 1967, c. 446, § 3,

p. 1389; Laws 1969, c. 794, § 1, p. 3000; Laws 1972, LB 782, § 1; Laws 1973, LB 180, § 1; Laws 1976, LB 986, § 3; Laws 1981, LB 266, § 2; Laws 1982, LB 792, § 1; Laws 1983, LB 498, § 5; Laws 1984, LB 130, § 15; Laws 1985, LB 253, § 9; Laws 1986, LB 217, § 12; Laws 1987, LB 459, § 6; Laws 1989, LB 215, § 18; Laws 1993, LB 251, § 4; Laws 1993, LB 348, § 79; Laws 1993, LB 377, § 7; Laws 1995, LB 401, § 44; Laws 1996, LB 1044, § 837; Laws 1997, LB 307, § 215; Laws 1999, LB 594, § 70; Laws 2000, LB 819, § 153; Laws 2007, LB296, § 728; Laws 2013, LB265, § 47.

#### Cross References

**Arson Reporting Immunity Act**, see section 81-5,115.

**Health Care Facility Licensure Act**, see section 71-401.

**Inspection of businesses credentialed under the Uniform Credentialing Act**, see section 38-139.

**Nebraska Natural Gas Pipeline Safety Act of 1969**, see section 81-552.

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

**Storage tank registration**, see sections 81-1575 to 81-1577.01.

Where state fire marshals had reliable information about existence of incendiary device, action of going upon property and inspecting for existence of fire without actual entry or search of building was proper. *State v. Howard*, 184 Neb. 274, 167 N.W.2d 80 (1969).

#### **81-502.01 Nebraska Fire Safety Appeals Board; members; appointment; qualifications; term.**

For the purposes of assisting the State Fire Marshal in matters pertaining to the performance of his or her duties, there is hereby established the Nebraska Fire Safety Appeals Board. Such board shall consist of the following members: (1) A representative of the fire insurance industry with experience in fire prevention inspections, (2) an architect licensed in this state, (3) a member of a board of education of a public school district, (4) a fire protection engineer, (5) a member of the inspection division of a paid fire department in this state, (6) an active member of a volunteer fire department in this state, (7) two representatives of the Department of Health and Human Services, and (8) a representative of the Nebraska Association of Hospitals and Health Systems. The members shall be appointed by the Governor and shall serve for a term of four years.

**Source:** Laws 1971, LB 570, § 1; Laws 1977, LB 485, § 1; Laws 1996, LB 1044, § 838; Laws 1997, LB 622, § 116; Laws 2007, LB296, § 729.

#### **81-502.02 Nebraska Fire Safety Appeals Board; duties; expenses; meetings.**

The board shall select from among its members a chairperson and adopt and promulgate rules and regulations to govern its procedures. Any vacancy occurring in the board shall be filled in the manner in which original appointments are made. No person shall receive any compensation for services rendered as a member of the board. Each member of the board shall be reimbursed for his or her actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees. The board shall meet at such times as the business of the board requires and at such places as may be established by its chairperson. When requested to do so by the State Fire Marshal, it shall be the duty of the board to make a study of the specific problems, questions, or appeals presented to the board. No member of the board shall sit in hearing upon any question in which such member or any corporation of which he or she is a shareholder or employee is a party.

**Source:** Laws 1971, LB 570, § 2; Laws 1977, LB 485, § 2; Laws 1981, LB 204, § 169; Laws 1988, LB 893, § 5.

**81-502.03 Nebraska Fire Safety Appeals Board; disagreement; hearing; notice; decision; written report prior to order; exception.**

In case of disagreement concerning the propriety of any action taken or proposed to be taken by the State Fire Marshal or the application of any statute, rule, or regulation of his or her office with respect to any establishment or installation, the State Fire Marshal may, and upon application of any party in interest, shall provide for a hearing before the Nebraska Fire Safety Appeals Board in the county of the establishment or installation which is the subject of the disagreement. At least ten days' written notice shall be given to the governing body responsible for the establishment or installation involved and to any public official having jurisdiction. The board shall make a decision based upon the evidence brought forth in the hearing and issue its order accordingly. Prior to ordering any political or governmental subdivision of the State of Nebraska to make any modification in the design or construction of any public building or any modification in the location, installation, or operation of any existing equipment in any public building or to replace such equipment, the State Fire Marshal, his or her first assistant, or one of his or her deputies shall personally appear at a regular meeting of the governing board of such subdivision and present a written report stating the condition of such building or equipment and the reason why such building should be modified or such equipment should be modified or replaced, and a copy of such report shall be attached to the order. Nothing in this section shall prevent the State Fire Marshal from ordering necessary repairs, and nothing in sections 81-502.01 to 81-502.03 shall prevent the State Fire Marshal, when actual and immediate danger to life exists, from ordering and requiring the occupants to vacate a building or structure subject to his or her jurisdiction.

**Source:** Laws 1971, LB 570, § 3; Laws 1977, LB 485, § 3; Laws 1988, LB 893, § 6.

**81-502.04 Rules and regulations; enforcement; procedure.**

The enforcement of rules and regulations adopted and promulgated by the State Fire Marshal under section 81-502 shall be as follows:

(1) Any order of the State Fire Marshal under the authority granted to him or her by section 81-502 shall be in writing addressed to the owner or person in charge of the premises affected by such order;

(2) If the affected party or organization does not comply with the final order, the State Fire Marshal shall apply to the district court of the county in which the premises are located to obtain court enforcement of the order. The county attorney of the county in which the action is brought shall represent the State Fire Marshal and the action shall be brought in the name of the State of Nebraska and be tried the same as any action in equity; and

(3) If the affected party or organization feels that the order of the State Fire Marshal is not necessary for the safety and welfare of the persons using or to use the premises regarding which the order is made, the party or organization may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1973, LB 180, § 2; Laws 1988, LB 893, § 7; Laws 1988, LB 352, § 167.

## Cross References

Administrative Procedure Act, see section 84-920.

**81-503 State Fire Marshal; first assistant; appointment; other employees; duties; uniforms.**

(1) The State Fire Marshal may appoint a first assistant fire marshal and such deputies, inspectors, and other persons as in his or her discretion may be necessary to carry into effect sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal. He or she may also, at his or her pleasure, remove such first assistant and any of such deputies as he or she may deem advisable. The deputies and inspectors shall perform such duties and have and enjoy all the rights, privileges, and immunities granted by law. The State Fire Marshal may also employ such clerical assistants, office employees, and other persons as he or she may deem advisable and necessary to carry such duties into effect.

(2) The State Fire Marshal, the first assistant fire marshal, each deputy, and each inspector shall wear full uniform when performing statutory duties. The State Fire Marshal shall determine the type of clothing, in relation to the duty being performed, necessary to meet the full uniform requirement.

**Source:** Laws 1925, c. 183, § 3, p. 480; C.S.1929, § 81-5503; R.S.1943, § 81-503; Laws 1947, c. 314, § 1, p. 951; Laws 1953, c. 330, § 1, p. 1088; Laws 1957, c. 375, § 1, p. 1315; Laws 1969, c. 763, § 10, p. 2891; Laws 1983, LB 498, § 6; Laws 1988, LB 893, § 8; Laws 1993, LB 348, § 80.

## Cross References

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

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

**81-503.01 Repealed. Laws 1959, c. 266, § 1.****81-504 State Fire Marshal; legal counsel; appointment by Attorney General; compensation.**

The Attorney General may appoint a special attorney to assist and advise the State Fire Marshal. The attorney appointed for this purpose shall at all times be under the supervision of the Attorney General, who shall fix his or her compensation, which shall be paid wholly out of the State Fire Marshal Cash Fund.

**Source:** Laws 1925, c. 183, § 4, p. 480; C.S.1929, § 81-5504; R.S.1943, § 81-504; Laws 2004, LB 1091, § 12.

**81-505 First assistant and deputies; duties.**

The duties of the first assistant and the deputies shall be to operate under the direction of and to assist the State Fire Marshal in the execution of sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal. In the event of a vacancy in the office of State Fire Marshal and until a successor is appointed or during the absence or disability of that

officer, the first assistant fire marshal, with the assent and approval of the Governor, shall assume the duties of that office.

**Source:** Laws 1925, c. 183, § 5, p. 480; C.S.1929, § 81-5505; R.S.1943, § 81-505; Laws 1969, c. 763, § 11, p. 2892; Laws 1988, LB 893, § 9; Laws 1993, LB 251, § 5; Laws 1993, LB 348, § 81.

**Cross References**

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

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

**81-505.01 State Fire Marshal; establish and assess fees; procedures.**

(1) The State Fire Marshal shall establish and assess fees not to exceed the actual costs for the performance of services by the State Fire Marshal or by qualified local fire prevention personnel to whom the State Fire Marshal has delegated authority to perform such services. Prior to establishing or altering such fees, the State Fire Marshal shall hold a public hearing on the question of the adoption of or change in fees. Notice of such hearing shall be given at least thirty days prior thereto (a) by publication in a newspaper having general circulation in the state and (b) by notifying in writing the head of any agency or department having jurisdiction over facilities that would be subject to the fees. Fees for services performed by the State Fire Marshal shall be paid to the State Fire Marshal and shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund. Fees for services performed by local fire prevention personnel shall be paid directly to the office of the local fire prevention personnel.

(2) The fee for inspection for fire safety of any premises or facility pursuant to section 81-502 shall be not less than twenty-five nor more than one hundred fifty dollars and shall be paid by the licensee or applicant for a license. The fee for inspection for fire safety of the same premises or facility made within twelve months after the last prior inspection shall be not less than twenty-five nor more than one hundred fifty dollars and shall be paid by the licensee or applicant for a license. The fees for inspection for fire safety of foster family homes as defined in section 71-1901 may be paid by the Department of Health and Human Services.

(3) The fee for providing investigation reports to insurance companies shall not exceed three dollars for each report provided. The State Fire Marshal may charge an amount not to exceed the actual cost of preparation for any other approved information release.

(4)(a) Except as provided in subdivision (b) of this subsection, the fee for reviewing plans, blueprints, and shop drawings to determine compliance with rules and regulations adopted and promulgated pursuant to section 81-502 shall be assessed according to the following schedule:

TOTAL VALUE OF PROPOSED STRUCTURE OR IMPROVEMENT	FEE
\$1 - \$5,000	\$5.00
\$5,001 - \$25,000	\$5.00 for the first \$5,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$25,001 - \$50,000	\$15.00 for the first \$25,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$50,001 - \$100,000	\$25.00 for the first \$50,000.00 plus \$1.00 for each additional \$5,000.00 or fraction thereof.

**§ 81-505.01****STATE ADMINISTRATIVE DEPARTMENTS**

\$100,001 - \$200,000	\$35.00 for the first \$100,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof.
\$200,001 or more	\$50.00 for the first \$200,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof, except that the total fee shall not exceed \$500.00.

(b) The fees set out in subdivision (a) of this subsection shall not be assessed or collected by any political subdivision to which the State Fire Marshal has delegated the authority to conduct such review and which reviews plans, blueprints, or shop drawings to determine compliance with such political subdivision's own fire safety regulations. Nothing in this subdivision shall be construed to prohibit such political subdivision from assessing or collecting a fee set by its governing board for such review.

(c) An additional fee equal to fifty percent of the fee charged pursuant to subdivision (a) of this subsection shall be assessed for reviewing plans, blueprints, and shop drawings to determine compliance with the accessibility standards and specifications adopted pursuant to section 81-5,147, except that the additional fee assessed pursuant to this subdivision shall not exceed two hundred fifty dollars.

**Source:** Laws 1983, LB 498, § 7; Laws 1986, LB 471, § 1; Laws 1988, LB 893, § 10; Laws 1988, LB 930, § 3; Laws 1993, LB 251, § 6; Laws 1993, LB 377, § 8; Laws 1996, LB 1044, § 839; Laws 1997, LB 307, § 216; Laws 2013, LB265, § 48.

**81-506 Fires; investigation by city or county authorities; reports to State Fire Marshal required.**

The chief of the fire department of every city or village in which a fire department is established, the mayor of every incorporated city in which no fire department exists, the town clerk of every organized township, or the county commissioner in every commissioner district in counties not under township organization without the limits of any organized city or village shall investigate or cause to be investigated the cause, origin, and circumstances of every fire occurring in such city, village, township, or commissioner district by which property has been destroyed or damaged. All fires of unknown origin shall be reported, and such officers shall especially make investigation and report as to whether such fire was the result of carelessness, accident, or design. Such investigation shall begin immediately after the occurrence of such fire, and the State Fire Marshal shall have the right to supervise and direct such investigation whenever he or she deems it expedient or necessary. The officer making the investigation of fires occurring in cities, villages, townships, or commissioner districts shall forthwith notify the State Fire Marshal and shall, within one week of the occurrence of the fire, furnish him or her written statement of all the facts relating to the cause and origin of the fire and such further information as he or she may call for.

**Source:** Laws 1925, c. 183, § 6, p. 480; C.S.1929, § 81-5506; R.S.1943, § 81-506; Laws 1988, LB 893, § 11.

**81-507 State Fire Marshal; records and statistics on fires required.**

The State Fire Marshal shall keep in his office a record by alphabetical index, name of town, and by county and precinct in all unincorporated territory, of all

the fires occurring in the state, together with all facts, statistics and circumstances, including the cause and origin of the fires, which may be determined by the investigation provided by section 81-506. Such reports and statistics shall be at all times open to public inspection.

**Source:** Laws 1925, c. 183, § 6, p. 480; C.S.1929, § 81-5506; R.S.1943, § 81-507.

**81-508 State Fire Marshal; arson; investigations; evidence.**

The State Fire Marshal shall, when in his opinion further investigation is necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have any means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing. If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall file complaint with the county attorney, who shall cause such person to be arrested and charged with such offense. The fire marshal shall furnish to the proper prosecuting attorney all such evidence, together with a copy of all names of all witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case; and shall keep a record of the proceedings and progress made in all such prosecutions for arson and the result of all cases finally disposed of.

**Source:** Laws 1925, c. 183, § 7, p. 481; C.S.1929, § 81-5507; R.S.1943, § 81-508.

It is statutory duty of fire marshal to investigate the cause, origin and circumstances of every fire. *McHugh v. Ridgell*, 105 Neb. 212, 180 N.W. 75 (1920).

**81-509 State Fire Marshal; investigations; witnesses; subpoena; oath; perjury; contempt.**

(1) The State Fire Marshal, first assistant fire marshal, and deputies shall each have the power in any county of the State of Nebraska to summon and compel the attendance of witnesses before them, or any of them, to testify in relation to any matter which is by the provisions of sections 81-501.01 to 81-531 a subject of inquiry and investigation, and may require the production of any book, paper, or document deemed pertinent thereto by them or any of them. Such summons shall be served in the same manner and have the same effect as subpoenas from district courts. All witnesses shall receive the same compensation as is paid to witnesses in district courts, with mileage to be computed at the rate provided in section 81-1176 for state employees, which shall be paid out of the State Fire Marshal Cash Fund upon vouchers signed by the State Fire Marshal, first assistant fire marshal, or deputy before whom any witnesses shall have attended. Such officer shall, at the close of the investigation wherein such witness was subpoenaed, certify to the attendance and mileage of such witness and file such certificate in the office of the State Fire Marshal. All investigations held by or under the direction of the State Fire Marshal or his or her subordinates may be private, and persons other than those required to be present may be excluded from the place where such investigation is held. Witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

(2) The State Fire Marshal, first assistant fire marshal, and deputies are each authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before them, and false swearing in any manner or proceeding aforesaid shall be deemed perjury and shall be punished as such upon conviction in any court of competent jurisdiction.

(3) Any witness (a) who refuses to be sworn, (b) who refuses to testify, (c) who disobeys any lawful order of the State Fire Marshal, first assistant fire marshal, or deputy in relation to any investigation, (d) who fails or refuses to produce any paper, book, or document touching any matter under examination, or (e) who commits any contemptuous conduct after being summoned to appear before the State Fire Marshal, first assistant, or deputy to give testimony in relation to any matter or subject under examination or investigation as aforesaid shall be subject to conviction for contempt and, upon conviction of such contempt before any court of competent jurisdiction, shall be punished as provided by law for contempt of the orders of a district court, except that no person shall be compelled to give testimony which might tend to incriminate him or her or to give testimony which is considered privileged by the laws of the State of Nebraska.

**Source:** Laws 1925, c. 183, § 8, p. 482; C.S.1929, § 81-5508; R.S.1943, § 81-509; Laws 1981, LB 204, § 170; Laws 1981, LB 205, § 2; Laws 1988, LB 893, § 12; Laws 2004, LB 1091, § 13.

**81-510 State Fire Marshal; investigations; witnesses; disobedience of subpoena or contumacy; penalty.**

Disobedience of any subpoena in such proceedings, or contumacy of a witness, may, upon application of the State Fire Marshal to the district court of the county in which the offense was committed, be punished by the district court in the same manner as if the proceedings were pending in such court.

**Source:** Laws 1925, c. 183, § 9, p. 483; C.S.1929, § 81-5509; R.S.1943, § 81-510.

**81-511 Buildings; entry and inspection by State Fire Marshal; when authorized.**

In the performance of the duties imposed by the provisions of sections 81-501.01 to 81-531, the State Fire Marshal and any of his subordinates, may, at all times of the day and night, enter upon and examine any building or premises where a fire is in progress or has occurred, and other buildings and premises adjoining or near thereto.

**Source:** Laws 1925, c. 183, § 10, p. 483; C.S.1929, § 81-5510; R.S.1943, § 81-511.

**81-512 Buildings; entry and inspection; when authorized.**

The State Fire Marshal, his or her first assistant, deputies, and subordinates, the chief of the fire department of each city or village where a fire department is established, the mayor of a city, the chairperson of the board of trustees of a village where no fire department exists, or the clerk of a township or the county commissioner of a commissioner district in territory without the limits of a city or village, at all reasonable hours, may enter into all buildings and upon all premises within his or her jurisdiction for the purposes of examination, in harmony with sections 81-501.01 to 81-531, the Nebraska Natural Gas Pipeline

Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal.

**Source:** Laws 1925, c. 183, § 11, p. 483; C.S.1929, § 81-5511; R.S.1943, § 81-512; Laws 1993, LB 251, § 7.

**Cross References**

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

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

**81-513 Buildings; condemnation or order to repair; conditions; power of State Fire Marshal; violation of order; penalty.**

The State Fire Marshal may condemn and by order direct the destruction, repair, or alteration of any building or structure which by reason of age, dilapidated condition, defective chimneys, defective electric wiring, gas connections, heating apparatus, or other defect is especially liable to fire and which, in his or her judgment, is so situated as to endanger life or limb or other buildings or property in the vicinity. Before he or she condemns or orders the destruction, closing, or nonoccupancy of any building or structure owned by a governmental entity for any other cause than fire prevention, he or she shall be required to submit a written report from a building contractor, an architect, or a professional engineer stating the condition of the building and the reason why such building or structure should be condemned, destroyed, closed, or ordered to remain unoccupied, and a copy of the report shall be attached to the order. In case the order requires the repair of a building, the owner, lessee, or other person upon whom rests the duty to keep the structure in repair and upon whom such order is served shall make such repairs as are thereby directed within the limit of time stated in the order. The order, if considered necessary by the State Fire Marshal for the protection of life or property, may direct that the structure be closed and not further used or occupied until such repairs are made. Any person who shall willfully disobey the order directing the closing of such buildings, pending the making of such repairs, shall be guilty of a Class III misdemeanor. Each day such person shall neglect or refuse to obey the order shall be deemed a separate and distinct offense in violation thereof.

**Source:** Laws 1925, c. 183, § 12, p. 484; C.S.1929, § 81-5512; R.S.1943, § 81-513; Laws 1949, c. 280, § 1, p. 975; Laws 1977, LB 39, § 288; Laws 1988, LB 893, § 13; Laws 1993, LB 251, § 8; Laws 1997, LB 622, § 117.

The requirement of this section that a certificate of a building contractor, licensed architect, or licensed engineer be procured by the State Fire Marshal before ordering the demolition of a building applies only where the reason for destruction is other than fire protection. *State Fire Marshal v. Schaneman*, 203 Neb. 413, 279 N.W.2d 101 (1979).

Under the provisions of this section, if an owner agrees to make repairs and then neglects or refuses to do so, demolition of the building may be ordered. *State Fire Marshal v. Schaneman*, 203 Neb. 413, 279 N.W.2d 101 (1979).

Order for the repair or demolition of a building under this section must be supported by facts established by preponderance of evidence upon trial in district court. *State Fire Marshal v. Village of Dorchester*, 186 Neb. 94, 180 N.W.2d 919 (1970).

Order by State Fire Marshal to either demolish or repair building was proper. *First Investment Co. v. State Fire Marshal*, 175 Neb. 66, 120 N.W.2d 549 (1963).

The conditions prescribed by this section must exist to authorize order condemning premises as a fire hazard. *Iverson v. Keith County*, 152 Neb. 565, 41 N.W.2d 858 (1950).

State Fire Marshal has the right to rest his order upon a requirement that building must be destroyed, but if he does so, he assumes burden of proving that destruction is a necessity. *In re Application of Iverson*, 151 Neb. 802, 39 N.W.2d 797 (1949).

Decision of department that building is a nuisance and ordering it abated is not conclusive in courts. *State v. Keller*, 108 Neb. 742, 189 N.W. 374 (1922).

**81-514 Buildings; exits and fire escapes.**

Whenever the State Fire Marshal, upon inspection, shall find a building of such construction and use that the exits and means of egress already provided

do not afford reasonably safe escape in case of fire for the number of people customarily within, he or she may order such exits to be opened and such means of escape to be provided as, in his or her judgment, are reasonably necessary to eliminate the danger arising therefrom. If considered necessary by the State Fire Marshal, the order may direct that the building be closed and not used or occupied until such exits and means of egress are provided. If increased exiting capacity does not correct overcrowded conditions, occupancy limits shall be strictly enforced.

**Source:** Laws 1925, c. 183, § 13, p. 484; C.S.1929, § 81-5513; R.S.1943, § 81-514; Laws 1988, LB 893, § 14.

**Cross References**

For requirement of fire escapes, see section 48-420.

**81-515 Buildings; condemnation or repair orders; filing in district court; enforcement.**

The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure so ordered to be altered, repaired or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in said court.

**Source:** Laws 1925, c. 183, § 14, p. 485; C.S.1929, § 81-5514; R.S.1943, § 81-515.

Upon a trial the district court may modify the specifications in order of repair to obtain a reasonable compliance with the purpose of the act. State Fire Marshal v. Village of Dorchester, 186 Neb. 94, 180 N.W.2d 919 (1970).

Proceeding to condemn building was properly instituted by order of State Fire Marshal. First Investment Co. v. State Fire Marshal, 175 Neb. 66, 120 N.W.2d 549 (1963).

Requirements of order of condemnation are found in this section. Iverson v. Keith County, 152 Neb. 565, 41 N.W.2d 858 (1950).

Investigation and determination of State Fire Marshal are ex parte. In re Application of Iverson, 151 Neb. 802, 39 N.W.2d 797 (1949).

**81-516 Buildings; condemnation or repair orders; service upon owner and tenant.**

A copy of the order filed in accordance with section 81-515 together with a written notice that the same has been so filed and will be put in force unless the owner or occupying tenant shall file with the clerk of said court his or her objections and answer thereto within the time specified in section 81-517, shall be served upon the owner of the building or structure so directed to be altered, repaired, or demolished, and if there be a tenant occupying the building, then also upon the occupant, which service shall be made upon such owner and tenant, if there be one, in the manner provided for service of a summons in a civil action.

**Source:** Laws 1925, c. 183, § 15, p. 485; C.S.1929, § 81-5515; R.S.1943, § 81-516; Laws 1983, LB 447, § 94.

**81-517 Buildings; condemnation or repair orders; objections; filing; service; hearing.**

The owner of any building so condemned or any lessee upon whom such notice and order are served, within twenty days from the date of such service as herein provided, may file with the clerk of the court and serve upon the State Fire Marshal, by certified or registered mail, written objections to the order in the form of an answer denying the existence of any of the facts therein recited

which he or she desires to controvert. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the State Fire Marshal to proceed with the enforcement thereof. If an answer is filed and served, the court shall hear and determine the issues so raised and give judgment thereon as herein provided.

**Source:** Laws 1925, c. 183, § 16, p. 485; C.S.1929, § 81-5516; R.S.1943, § 81-517; Laws 1987, LB 93, § 22.

Hearing in district court constitutes a trial in equity, and is reviewable de novo on appeal. In re Application of Iverson, 151 Neb. 802, 39 N.W.2d 797 (1949).

**81-518 Buildings; condemnation or repair orders; time and place of hearing; jurisdiction of district court.**

The court, upon application of the State Fire Marshal, shall make its order fixing a time and place for such hearing, which place may be at any convenient point within the judicial district, and which time shall be within ten days from the date of the filing of the answer, or as soon thereafter as may be. If upon such trial the order shall be sustained, judgment shall be given accordingly, and fixing a time within which the building shall be altered, destroyed or repaired, as the case may be, in compliance with such order, but otherwise the court shall annul and set aside the order of condemnation.

**Source:** Laws 1925, c. 183, § 17, p. 486; C.S.1929, § 81-5517; R.S.1943, § 81-518.

Legislative policy contemplates that the owner shall have a trial and a determination on the merits in district court. In re Application of Iverson, 151 Neb. 802, 39 N.W.2d 797 (1949).

**81-519 Buildings; condemnation order; demolition or repair by State Fire Marshal; when authorized; expense; collection.**

If the owner or other party in interest shall fail to comply with the order of condemnation of a structure as hereinbefore provided, within the time fixed thereby, or within the time fixed by the court in case a trial is had therein, then the State Fire Marshal shall proceed to sell such building, structure and contents at public auction, to be demolished or repaired, in accordance with the direction contained in such order. The purchaser shall be required to comply with the directions contained in the order. In the event the State Fire Marshal is unable to sell such building, structure and contents the building, structure and contents shall become the property of the county in which the building exists and it shall be the duty of the county to comply with the directions contained in such order. All expenses incurred by the county in the demolition or repair of such building, structure and contents may be assessed as a special charge against the real estate on which such building or structure is or was situated and the same shall be collected in the same manner as other taxes.

**Source:** Laws 1925, c. 183, § 18, p. 486; C.S.1929, § 81-5518; R.S.1943, § 81-519; Laws 1969, c. 795, § 1, p. 3002.

Where constitutionality of statute not raised in original action, it will be presumed valid upon application for writ of assistance. State Fire Marshal v. Village of Dorchester, 189 Neb. 464, 203 N.W.2d 160 (1973).

Owner of building ordered demolished by State Fire Marshal cannot be compelled to pay one half the cost of restoring party wall of adjoining property owner. First Investment Co. v. State Fire Marshal, 175 Neb. 66, 120 N.W.2d 549 (1963).

If owner fails to comply with order of district court, State Fire Marshal is authorized to proceed in accordance with the order. In re Application of Iverson, 151 Neb. 802, 39 N.W.2d 797 (1949).

### **81-520 Buildings; fire hazards; abatement; penalty.**

The State Fire Marshal or any deputy or inspector who finds in any building or upon or beneath any premises any combustibles or explosive material, rubbish, rags, waste, oil, gasoline, or inflammable matter of any kind endangering the safety of such building or property or the occupants thereof or the occupants of adjoining buildings shall order such materials removed or such dangerous condition abated within a specified time. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises, and any such owner, lessee, agent, or occupant upon whom such order shall be served who fails to comply with such order within the time prescribed in the order shall be guilty of a Class V misdemeanor. Such material may be removed or dangerous condition abated at the expense of the owner of such building and premises or the person upon whom such service is so made, or both, and the State Fire Marshal may maintain all necessary actions for the recovery thereof.

**Source:** Laws 1925, c. 183, § 19, p. 487; C.S.1929, § 81-5519; R.S.1943, § 81-520; Laws 1988, LB 893, § 15; Laws 1993, LB 251, § 9.

#### **81-520.01 Statewide open burning ban; waiver; permit; fee.**

(1) There shall be a statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.

(2) The fire chief of a local fire department may waive an open burning ban under subsection (1) of this section for an area under the local fire department's jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the fire chief to a person desiring to conduct open burning shall be in writing, signed by the fire chief, and on a form prescribed by the State Fire Marshal. The State Fire Marshal shall provide local fire departments with such forms.

(3) The fire chief of a local fire department may waive the open burning ban in the local fire department's jurisdiction when conditions are acceptable to the chief. Anyone intending to burn in such jurisdiction when the open burning ban has been waived shall notify the fire chief of his or her intention to burn prior to starting the burn.

(4) The fire chief of a local fire department may adopt standards listing the conditions acceptable for issuing a permit to conduct open burning under subsection (2) of this section.

(5) The local fire department may charge a fee, not to exceed ten dollars, for each such permit issued. This fee shall be remitted to the governing body for inclusion in the general funds allocated to the fire department. Such funds shall not reduce the tax requirements for the fire department. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under subsection (2) of this section in the course of such state's or political subdivision's official duties.

**Source:** Laws 1980, LB 810, § 2; Laws 1982, LB 790, § 1; Laws 1994, LB 408, § 1; Laws 2011, LB248, § 1.

A permit issued under this section is a license and does not create any contractual liability between the person obtaining the permit and the fire district that issues it. Syracuse Rur. Fire Dist. v. Pletan, 254 Neb. 393, 577 N.W.2d 527 (1998).

**81-520.02 Open burning ban; range-management burning; violations; penalty.**

Any person violating the statewide open burning ban established by section 81-520.01 or violating sections 81-520.03 to 81-520.05 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1980, LB 810, § 3; Laws 1989, LB 19, § 1; Laws 1994, LB 408, § 2.

**81-520.03 Land-management burning, defined; fire chief of local fire department; designate member of department.**

(1) For purposes of sections 81-520.01 to 81-520.05, the fire chief of a local fire department may designate a member of the local fire department to share the powers and duties of the fire chief under such sections, except adopting standards pursuant to subsection (4) of section 81-520.01.

(2) For purposes of sections 81-520.04 and 81-520.05, land-management burning means the controlled application of fire to existing vegetative matter on land utilized for grazing, pasture, forests, or grassland to control weeds, pests, insects, and disease, prevent wildland fires, manage watersheds, care for windbreaks, and conduct scientific research.

**Source:** Laws 1994, LB 408, § 3; Laws 2011, LB248, § 2.

**81-520.04 Land-management burning; permit; issuance; when.**

The fire chief of a local fire department may waive an open burning ban under subsection (1) of section 81-520.01 by issuing a permit for land-management burning only if the land-management burning is to be conducted in accordance with section 81-520.05.

**Source:** Laws 1994, LB 408, § 4; Laws 2011, LB248, § 3.

**81-520.05 Land-management burning; application for permit; plan; contents; fire chief; duties.**

(1) A landowner, tenant, or other landowner's agent of the land where land-management burning is proposed shall file an application for a permit and a plan for conducting such burning. The plan shall include:

(a) The name of the landowner of the land on which land-management burning is to occur;

(b) The name of the person who will supervise the land-management burning if such person is different than the landowner;

(c) The land-management objective to be accomplished;

(d) A map showing the areas to be burned, including natural and manmade firebreaks;

(e) Procedures to be used to confine the fire in boundary areas without preexisting firebreaks;

(f) A list of equipment that will be on hand;

(g) The types and conditions of the vegetative matter to be burned on the land and in adjacent areas;

(h) Identification of roads and habitations that may be affected by smoke;

(i) A description of weather conditions believed to be required to safely and successfully conduct the land-management burning, including wind speed and direction, temperature, and relative humidity; and

(j) Such other information as may be prescribed by the fire chief of a local fire department.

(2) The fire chief of a local fire department shall evaluate each plan to determine its compliance with subsection (1) of this section. If a plan fails to comply with all provisions of such subsection, a permit for land-management burning shall not be issued.

(3) The fire chief of a local fire department shall issue a permit for land-management burning if (a) the plan complies with subsection (1) of this section and (b) the fire chief determines that land-management burning conducted in accordance with the plan would be conducted with due regard for the safety of people and property outside the burning areas. No permit shall be valid for more than thirty days.

**Source:** Laws 1994, LB 408, § 5; Laws 2011, LB248, § 4.

**81-521 Fire insurance companies; reports to State Fire Marshal required; copies mailed to fire department of certain cities.**

Every fire insurance company authorized to transact business in this state is required to report to the State Fire Marshal, through the secretary or other officer of the company designated by the board of directors for that purpose, all fire losses on property insured in any such company, giving the date of fire, the amount of probable loss, the character of property destroyed or damaged, and the supposed cause of the fire, together with the amount of insurance carried by such company. Such report shall be mailed to the State Fire Marshal within thirty days after notice of loss is received by such company. Each company is also required to report the amount of loss adjusted on each fire to the State Fire Marshal within thirty days after adjustment is made. Such report shall be in addition to any, and not in lieu of any, report or reports such companies may be required to make by any law of this state to the Director of Insurance; *Provided*, that in the case of a fire of suspicious origin a preliminary report shall be made immediately through some officer of the insurance company showing the name of the assured, the date of fire, location, occupancy, and such facts and circumstances as shall come to his knowledge, tending to establish the cause or origin of the fire; *and provided further*, that copies of the reports required by this section concerning any city of the metropolitan, primary, or first class shall be mailed by the insurance company concerned to the fire department of such city.

**Source:** Laws 1925, c. 183, § 20, p. 487; C.S.1929, § 81-5520; R.S.1943, § 81-521; Laws 1965, c. 550, § 1, p. 1799.

**81-522 Fires; failure of city or county authorities to investigate and report; penalty.**

Any officer referred to in section 81-506 who neglects to comply with any of the requirements of sections 81-501.01 to 81-531 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1925, c. 183, § 21, p. 488; C.S.1929, § 81-5521; R.S.1943, § 81-522; Laws 1977, LB 39, § 289.

**81-523 State Fire Marshal; office; support and maintenance; tax on fire insurance companies; rate.**

(1) For the purpose of maintaining the office of the State Fire Marshal and such other fire prevention activities as the Governor may direct, every foreign and alien insurance company including nonresident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-fourths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.

(2) For the purpose set forth in subsection (1) of this section, every domestic insurance company including resident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-eighths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.

(3) The term fire insurance business, as used in subsections (1), (2), and (4) of this section, shall include, but not be limited to, premiums of policies on fire risks on automobiles, whether written under floater form or otherwise.

(4) Return premiums on fire insurance business, subject to the fire insurance tax, in accordance with subsections (1) and (2) of this section, may be deducted from the gross direct writing premiums for the purpose of the tax calculations provided for by subsections (1) and (2) of this section. In the case of mutual companies and assessment associations, the dividends paid or credited to policyholders or members in this state shall be construed to be return premiums.

(5) Any tax collected pursuant to subsections (1) and (2) of this section shall be remitted to the State Treasurer for credit to the General Fund.

**Source:** Laws 1925, c. 183, § 22, p. 488; C.S.1929, § 81-5522; Laws 1933, c. 82, § 1, p. 330; C.S.Supp.,1941, § 81-5522; R.S.1943, § 81-523; Laws 1949, c. 281, § 1, p. 977; Laws 1953, c. 332, § 1, p. 1091; Laws 1957, c. 376, § 1, p. 1316; Laws 1979, LB 212, § 1; Laws 2003, LB 408, § 4; Laws 2004, LB 1091, § 14; Laws 2007, LB322, § 24.

Under former statute, fund created under its provisions could be paid out on proper warrants without legislative appropriation. State ex rel. Ridgell v. Hall, 99 Neb. 89, 155 N.W. 228 (1915), affirmed on rehearing 99 Neb. 95, 156 N.W. 16 (1916).

**81-524 State Fire Marshal; office; salaries; expenses; payment.**

The State Fire Marshal shall keep on file in his office an itemized statement of all salaries and expenses incurred by his office, and shall approve all vouchers issued therefor, before they are submitted to the Director of Administrative Services for payment, which shall be allowed and paid in the same manner as other claims against the state.

**Source:** Laws 1925, c. 183, § 23, p. 489; C.S.1929, § 81-5523; R.S.1943, § 81-524.

**81-525 State Fire Marshal; records public; exceptions.**

All records on file in the State Fire Marshal's office shall be public, except any testimony, correspondence, or other matter taken in an investigation or an inspection by, or in a report to, the State Fire Marshal under the provisions of

the Nebraska Natural Gas Pipeline Safety Act of 1969 and sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 which he or she in his or her discretion may withhold from the public.

**Source:** Laws 1925, c. 183, § 24, p. 489; C.S.1929, § 81-5524; R.S.1943, § 81-525; Laws 1969, c. 763, § 12, p. 2892; Laws 1993, LB 348, § 82.

**Cross References**

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

**81-526 State Fire Marshal; investigations; duty of county attorney to act.**

The county attorney of any county, upon request of the State Fire Marshal, or his or her deputies or assistants, shall (1) assist such officers in the investigation of any fire which, in their opinion, is of suspicious origin and (2) act as attorney for such officers in all court proceedings in connection with the enforcement of sections 81-513 to 81-519 and the Petroleum Products and Hazardous Substances Storage and Handling Act when, in the exercise of a reasonable discretion, the county attorney shall determine that the evidence is sufficient to justify the bringing of such court proceedings.

**Source:** Laws 1925, c. 183, § 25, p. 489; C.S.1929, § 81-5525; R.S.1943, § 81-526; Laws 1945, c. 228, § 1, p. 675; Laws 1986, LB 217, § 13.

**Cross References**

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

**81-527 State Fire Marshal; schools; exits; fire drills.**

It shall be the duty of the State Fire Marshal and his or her deputies and assistants to require teachers of public and private schools and educational institutions to conduct regular fire drills in accordance with such rules and regulations as he or she may adopt and promulgate and to keep all doors and exits unlocked during school hours.

**Source:** Laws 1925, c. 183, § 26, p. 489; C.S.1929, § 81-5526; R.S.1943, § 81-527; Laws 1988, LB 893, § 16.

**Cross References**

For instruction on fire prevention in schools, see section 79-706.

**81-528 State Fire Marshal Cash Fund; created; use; investment.**

(1) The State Fire Marshal Cash Fund is created. Money collected pursuant to subsections (2) and (3) of this section shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to pay for costs incurred in the general operations program of the State Fire Marshal's office, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Fire Marshal Cash Fund shall be administered by the State Fire Marshal. 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) All money received from inspection contracts, penalties, fees, or forfeitures, except fines collected under sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157, shall be remitted to the State Treasurer for credit to the fund.

(3) All fees assessed pursuant to section 81-505.01 for services performed by the State Fire Marshal's office shall be remitted to the State Treasurer for credit to the fund.

**Source:** Laws 1925, c. 183, § 27, p. 489; C.S.1929, § 81-5527; R.S.1943, § 81-528; Laws 1969, c. 584, § 97, p. 2407; Laws 1973, LB 120, § 1; Laws 1983, LB 498, § 8; Laws 1993, LB 348, § 83; Laws 1994, LB 1066, § 99; Laws 2004, LB 1091, § 15; Laws 2009, First Spec. Sess., LB3, § 65.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-529 Sections, how construed.**

It is declared that sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 are in nature necessary for the public safety, health, peace, and welfare and shall be liberally construed.

**Source:** Laws 1925, c. 183, § 28, p. 490; C.S.1929, § 81-5528; R.S.1943, § 81-529; Laws 1993, LB 348, § 84.

**81-530 Repealed. Laws 1981, LB 545, § 52.**

**81-531 Fire chiefs; local officers; fire reports; compensation; mileage.**

(1) There shall be paid to the chiefs of fire departments and mayors of cities who do not receive to exceed fifty dollars annually as compensation for their services as such chiefs or mayors, to chairpersons of the village boards, to the township clerks of every organized township, and to county commissioners in counties not under township organization, who are required by section 81-506 to report fires to the State Fire Marshal, the sum of one dollar for each fire reported to the satisfaction of the State Fire Marshal, and, in addition thereto, mileage at the rate allowed by the provisions of section 81-1176 for each mile traveled from the officers' domicile to and from the place of fire when such mileage is compulsory to investigate the cause of fire by county commissioners or sheriffs but not by fire chiefs. This allowance shall be paid by the State Fire Marshal at the close of each fiscal year out of any funds provided for the use of the office of the State Fire Marshal.

(2) All chiefs of fire departments who receive a stated salary and devote their entire time to the duties of their respective fire departments, and those mayors of cities who receive a stated salary exceeding fifty dollars as such officers, shall be precluded from receiving any extra allowance for the report mentioned in subsection (1) of this section.

**Source:** Laws 1925, c. 183, § 30, p. 490; C.S.1929, § 81-5530; Laws 1933, c. 96, § 16, p. 396; C.S.Supp.,1941, § 81-5530; R.S.1943, § 81-531; Laws 1957, c. 70, § 9, p. 301; Laws 1996, LB 1011, § 34.

**81-532 Repealed. Laws 1985, LB 40, § 2.**

**81-533 Repealed. Laws 1985, LB 40, § 2.**

**81-534 Hotels and apartments more than fifty-five feet in height; standpipes; specifications.**

Every hotel building, rooming house or apartment house, exceeding fifty-five feet and not over one hundred feet in height, unless already provided with a three-inch or larger standpipe on the outside, shall be provided with a vertical standpipe of not less than four inches in diameter. For every hotel, rooming house or apartment house building exceeding one hundred feet in height, unless already provided with a four-inch or larger standpipe, there shall be provided a vertical standpipe not less than six inches in diameter. Such standpipes shall be of wrought iron or steel and, together with fittings and connections, shall be of such strength as to safely withstand at least three hundred pounds of water pressure to the square inch when installed and ready for service. Such standpipes shall have one hose valve on the roof and a hose valve at each floor opening, with double Siamese automatic valves at the bottom, about one foot above the curb level and adjusted looking down at an angle of forty-five degrees. All valve openings shall be of brass protected by a substantial brass cap, and all fittings and threads shall be of the size and form to fit regulation fire department hose. Such standpipes shall, where possible, be attached to the fire escape with iron ladder, for use of firemen, running the full height of the building and over the roof, and all hose connections shall be toward the building. This section shall not apply in cities or villages not equipped with waterworks and firefighting equipment suitable for using vertical standpipe.

**Source:** Laws 1919, c. 190, tit. V, art. XXI, § 10, p. 747; C.S.1922, § 8154; C.S.1929, § 81-5533; R.S.1943, § 81-534.

**81-535 Repealed. Laws 1985, LB 40, § 2.**

**81-536 Repealed. Laws 1985, LB 40, § 2.**

**81-537 Repealed. Laws 1985, LB 40, § 2.**

**81-538 Violations; penalty.**

Anyone violating any of the provisions of sections 81-501.01 to 81-534, for which no other specific penalty is provided, shall be deemed guilty of a Class V misdemeanor, and each day's noncompliance shall constitute a separate offense.

**Source:** Laws 1919, c. 190, tit. V, art. XXI, § 14, p. 749; C.S.1922, § 8158; C.S.1929, § 81-5537; R.S.1943, § 81-538; Laws 1947, c. 313, § 2, p. 950; Laws 1977, LB 39, § 290; Laws 1980, LB 810, § 1; Laws 1985, LB 40, § 1.

**81-539 Repealed. Laws 1988, LB 893, § 18.**

**81-540 Repealed. Laws 1988, LB 893, § 18.**

**81-541 Repealed. Laws 1988, LB 893, § 18.**

**81-541.01 High-rise building fire code; adoption; State Fire Marshal; duties.**

The State Fire Marshal shall not later than April 1, 1982, adopt and promulgate rules and regulations establishing a high-rise building fire code. Such code shall apply to all new and existing office buildings and all new and existing residential buildings with floors located more than five stories or seventy-five feet above the lowest level of access by a fire department vehicle. New buildings

shall mean buildings on which construction commences after the effective date of the code and existing buildings shall mean buildings on which construction has commenced on or before the effective date of the code. Existing buildings shall comply with the code on or before April 1, 1984. The code shall make distinctions between the standards set for new buildings and those set for existing buildings. Such rules and regulations may include, but not be limited to, provisions for the following:

- (1) A complete automatic sprinkler system or an approved alternate system;
- (2) A smoke detection system;
- (3) An alarm, communication, and central control system;
- (4) Areas of refuge;
- (5) Appropriate fire safety features for elevator systems;
- (6) Appropriate emergency, and standby power and light systems; and
- (7) Fire control devices for mechanical systems, including but not limited to, automatic shutdowns and fire dampers.

Such code shall conform generally with sections 1807 and 1907 and other related provisions, including sections 103, 104, 105, 106, and 502 of the Uniform Building Code published by the International Conference of Building Officials, 1979 edition, as it exists on August 30, 1981. The code adopted pursuant to this section shall constitute a minimum standard in Nebraska and local codes may be more restrictive.

**Source:** Laws 1981, LB 266, § 1.

#### (c) NATURAL GAS PIPELINE SAFETY

##### **81-542 Terms, defined.**

For purposes of the Nebraska Natural Gas Pipeline Safety Act of 1969, unless the context otherwise requires:

(1) The Natural Gas Pipeline Safety Act of 1968 of the United States shall mean Public Law 90-481, 82 Stat. 720, 90th Congress, S. 1166, enacted August 12, 1968;

(2) State Fire Marshal shall mean the officer appointed pursuant to section 81-501.01;

(3) Person shall mean any individual, firm, joint venture, partnership, limited liability company, corporation, association, municipality, cooperative association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

(4) Gas shall mean natural gas, flammable gas, or gas which is toxic or corrosive and which is transported in a gaseous form and not in a liquid form;

(5) Transportation of gas shall mean the gathering, transmission, or distribution of gas by pipeline or its storage, except that it shall not include any such transportation of gas which is subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act of the United States or the Interstate Commerce Commission under the Interstate Commerce Act or the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community

development, or any similar populated area which the State Fire Marshal may define as a nonrural area; and

(6) Pipeline facilities shall include, without limitation, new and existing pipe rights-of-way and any equipment facility or building used in the transportation of gas or the treatment of gas during the course of transportation but rights-of-way as used in the Nebraska Natural Gas Pipeline Safety Act of 1969 does not authorize the State Fire Marshal to prescribe the location or routing of any pipeline facility. Pipeline facilities shall not include any facilities subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act of the United States or the Interstate Commerce Commission under the Interstate Commerce Act.

**Source:** Laws 1969, c. 763, § 1, p. 2884; Laws 1993, LB 121, § 527.

**81-543 State Fire Marshal; safety standards for transportation of gas and operation of pipeline facilities; adopt waiver of compliance; conditions.**

(1) After June 12, 1969, and from time to time thereafter, and pursuant to the Administrative Procedure Act, the State Fire Marshal shall, by order, establish minimum safety standards for the transportation of gas and pipeline facilities. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Such safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the State Fire Marshal shall consider:

- (a) Relevant available pipeline safety data;
- (b) Whether such standards are appropriate for the particular type of pipeline transportation;
- (c) The reasonableness of any proposed standards;
- (d) The extent to which any such standards will contribute to public safety; and
- (e) The existing standards established by the United States Secretary of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968 of the United States and the Interstate Commerce Act.

(2) Any standards prescribed under this section, and amendments thereto, shall become effective thirty days after the date of issuance of such standards unless the State Fire Marshal, for good cause recited, determines an earlier or later effective date is required as the result of the period reasonably necessary for compliance.

(3) The State Fire Marshal shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.

(4) Whenever the State Fire Marshal shall find a particular facility to be hazardous to life or property he shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards.

(5) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, the State Fire Marshal may, after notice and

opportunity for hearing and under such terms and conditions and to such extent as he deems appropriate, waive in whole or in part compliance with any standards established under sections 81-503, 81-505, 81-525, and 81-542 to 81-552, if he determines that a waiver of compliance with such standard is not inconsistent with gas pipeline safety. The State Fire Marshal shall state his reasons for any such waiver.

**Source:** Laws 1969, c. 763, § 2, p. 2886.

**Cross References**

Administrative Procedure Act, see section 84-920.

**81-544 State Fire Marshal; certifications and reports to the United States Secretary of Transportation.**

The State Fire Marshal is authorized to make such certifications and reports to the United States Secretary of Transportation as may be required from time to time under the Natural Gas Pipeline Safety Act of 1968 of the United States.

**Source:** Laws 1969, c. 763, § 3, p. 2887.

**81-545 Transportation of gas; operation of pipeline facilities; safety standards; requirements.**

(1) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall (a) at all times after the date any applicable safety standard established under sections 81-503, 81-505, 81-525, and 81-542 to 81-552 takes effect comply with the requirements of such standard; (b) file and comply with a plan of inspection and maintenance required by section 81-548; and (c) permit access to or copying of records, and make reports or provide information, and permit entry or inspection, as required under section 81-549.

(2) Nothing in sections 81-503, 81-505, 81-525, and 81-542 to 81-552 shall affect the common-law or statutory tort liability of any person.

**Source:** Laws 1969, c. 763, § 4, p. 2887.

**81-546 Transportation of gas; operation of pipeline facilities; violations; notice; failure to comply; penalty; considerations.**

(1) Whenever the State Fire Marshal has reason to believe any person is violating any provision of subsection (1) of section 81-545 or any regulation under the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire Marshal shall give notice to such person and permit such person reasonable opportunity to achieve compliance. If compliance has not been achieved in a reasonable time, the State Fire Marshal may request the Attorney General to bring an action under section 81-547 in the district court for the county in which the defendant's principal place of business is located, and the district court may impose a civil penalty of not to exceed ten thousand dollars for each violation for each day that such violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

(2) In determining the amount of such penalty, the court shall consider the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged.

The amount of such penalty, when finally determined, may be deducted from any sums owing by the State of Nebraska to the person charged.

**Source:** Laws 1969, c. 763, § 5, p. 2887; Laws 1993, LB 49, § 1.

**81-547 Transportation of gas; operation of pipeline facilities; violations; district court; jurisdiction.**

(1) The district courts shall have jurisdiction to restrain violations of sections 81-503, 81-505, 81-525, and 81-542 to 81-552, including the restraint of transportation of gas or the operation of a pipeline facility, or to enforce standards established hereunder upon petition by the Attorney General on behalf of the State of Nebraska. Whenever practicable, the State Fire Marshal shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(2) Actions under subsection (1) of this section and section 81-546 shall be brought in the county in the State of Nebraska in which the defendant's principal place of business is located, and process in such cases may be served in any other county in the State of Nebraska where the defendant may be found or in which the defendant is an inhabitant or transacts business.

**Source:** Laws 1969, c. 763, § 6, p. 2888.

**81-548 Transportation of gas; operation of pipeline facilities; plan for inspection and maintenance; file with State Fire Marshal; adequacy of plan.**

Each person who engages in the transportation of gas or who owns or operates pipeline facilities subject to sections 81-503, 81-505, 81-525, and 81-542 to 81-552 shall file with the State Fire Marshal a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in accordance with the regulations prescribed by the State Fire Marshal. If at any time the State Fire Marshal finds that such plan is inadequate to achieve safe operation, he shall, after notice and opportunity for a hearing, require such plan to be revised. The plan required by the State Fire Marshal shall be practicable and designed to meet the need for pipeline safety. In determining the adequacy of any such plan, the State Fire Marshal shall consider:

- (1) Relevant available pipeline safety data;
- (2) Whether the plan is appropriate for the particular type of pipeline transportation;
- (3) The reasonableness of the plan; and
- (4) The extent to which such plan will contribute to public safety.

**Source:** Laws 1969, c. 763, § 7, p. 2888.

**81-549 Transportation of gas; operation of pipeline facilities; records; reports; inspection; State Fire Marshal; duties; confidential information.**

(1) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the State Fire Marshal may reasonably require to enable him or her to determine whether such person has

acted or is acting in compliance with the Nebraska Natural Gas Pipeline Safety Act of 1969 and the standards established under the act. Each such person shall, upon request of an officer, employee, or agent authorized by the State Fire Marshal, permit such officer, employee, or agent to inspect books, papers, records, and documents relevant to determining whether such person has acted or is acting in compliance with the act and the standards established pursuant to the act. For purposes of enforcement, officers, employees, or agents authorized by the State Fire Marshal, upon presenting appropriate credentials to the individual in charge, are authorized (a) to enter upon, at reasonable times, pipeline facilities and (b) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such facilities. Each such inspection shall be commenced and completed with reasonable promptness.

(2) In the course of the exercise of his or her duties and responsibilities under the act, the State Fire Marshal shall wherever practicable employ a practice of spot checking and issuance of certificates of compliance, with respect to persons subject to the act, to limit costs of enforcement of the safety standards established pursuant to section 81-543.

(3) All information reported to or otherwise obtained by the State Fire Marshal or his or her representative pursuant to subsection (1) of this section, which information contains or relates to a trade secret as referred to in 18 U.S.C. 1905 or otherwise constitutes a trade secret under law, shall be considered confidential for the purpose of such laws, except that such information may be disclosed to other officers or employees concerned with carrying out the act or when relevant in any proceeding under the act.

**Source:** Laws 1969, c. 763, § 8, p. 2889; Laws 1992, LB 858, § 1.

**81-550 Nebraska Natural Gas Pipeline Safety Cash Fund; created; use; investment; assessments.**

(1) The Nebraska Natural Gas Pipeline Safety Cash Fund is created. The fund shall consist of money received from assessments pursuant to this section which shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2010. The Nebraska Natural Gas Pipeline Safety Cash Fund shall be used for purposes of administering the Nebraska Natural Gas Pipeline Safety Act of 1969. The fund shall be administered by the State Fire Marshal. 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) To defray the cost of administering the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire Marshal shall on March 1 of each year make an assessment against persons having pipeline facilities in this state subject to the act, which assessment shall be paid within thirty days thereafter.

(3) The assessment against each such person shall be based on the number of meters such person has in service for the retail sale of gas in this state at the end of the calendar year next preceding such assessment. The amount of such assessment shall be set by the State Fire Marshal in an amount not to exceed twenty cents multiplied by the number of such meters for each such person.

(4) It shall be the duty of the State Fire Marshal to make timely application each year to the United States Government for the maximum funds to which

this state may be entitled from the United States Government for the administration of the act.

**Source:** Laws 1969, c. 763, § 9, p. 2890; Laws 1977, LB 410, § 1; Laws 1983, LB 383, § 1; Laws 1992, LB 858, § 2; Laws 2004, LB 1091, § 16; Laws 2009, First Spec. Sess., LB3, § 66.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-551 State Fire Marshal; duties; powers.**

The duties and powers of the State Fire Marshal and of his or her deputies and assistants prescribed in sections 81-509 to 81-523, 81-526, 81-527, 81-531 to 81-538, and 81-5,151 to 81-5,157 and the Petroleum Products and Hazardous Substances Storage and Handling Act shall not be applicable to the Nebraska Natural Gas Pipeline Safety Act of 1969.

**Source:** Laws 1969, c. 763, § 13, p. 2892; Laws 1986, LB 217, § 14; Laws 1988, LB 893, § 17; Laws 1993, LB 348, § 85.

Cross References

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

**81-552 Act, how cited.**

Sections 81-542 to 81-550 may be cited as the Nebraska Natural Gas Pipeline Safety Act of 1969.

**Source:** Laws 1969, c. 763, § 14, p. 2892.

(d) STATE ELECTRICAL DIVISION

**81-553 Repealed. Laws 1975, LB 525, § 45.**

**81-554 Repealed. Laws 1975, LB 525, § 45.**

**81-555 Repealed. Laws 1975, LB 525, § 45.**

**81-556 Repealed. Laws 1975, LB 525, § 45.**

**81-557 Repealed. Laws 1975, LB 525, § 45.**

**81-558 Repealed. Laws 1975, LB 525, § 45.**

**81-559 Repealed. Laws 1975, LB 525, § 45.**

**81-560 Repealed. Laws 1975, LB 525, § 45.**

**81-561 Repealed. Laws 1975, LB 525, § 45.**

**81-562 Repealed. Laws 1975, LB 525, § 45.**

**81-563 Repealed. Laws 1975, LB 525, § 45.**

**81-564 Repealed. Laws 1975, LB 525, § 45.**

**81-565 Repealed. Laws 1975, LB 525, § 45.**

**81-566 Repealed. Laws 1975, LB 525, § 45.**

**81-567 Repealed. Laws 1975, LB 525, § 45.**

**81-568 Repealed. Laws 1975, LB 525, § 45.**

**81-569 Repealed. Laws 1975, LB 525, § 45.**

**81-570 Repealed. Laws 1975, LB 525, § 45.**

(e) STATE ELECTRICAL ACT

**81-571 Transferred to section 81-2101.**

**81-572 Transferred to section 81-2102.**

**81-573 Transferred to section 81-2103.**

**81-574 Transferred to section 81-2145.**

**81-575 Transferred to section 81-2104.**

**81-576 Transferred to section 81-2105.**

**81-577 Transferred to section 81-2106.**

**81-578 Transferred to section 81-2107.**

**81-579 Transferred to section 81-2108.**

**81-580 Transferred to section 81-2109.**

**81-581 Transferred to section 81-2110.**

**81-582 Transferred to section 81-2111.**

**81-583 Transferred to section 81-2112.**

**81-584 Transferred to section 81-2113.**

**81-585 Transferred to section 81-2114.**

**81-586 Transferred to section 81-2115.**

**81-587 Transferred to section 81-2116.**

**81-588 Transferred to section 81-2117.**

**81-589 Transferred to section 81-2118.**

**81-590 Transferred to section 81-2119.**

**81-591 Transferred to section 81-2120.**

**81-592 Transferred to section 81-2121.**

**81-593 Transferred to section 81-2122.**

**81-593.01 Transferred to section 81-2123.**

**81-594 Transferred to section 81-2124.**

**81-595 Transferred to section 81-2125.**

**81-596 Transferred to section 81-2126.**

**81-597 Transferred to section 81-2127.**

**81-598 Transferred to section 81-2128.**

**81-599 Transferred to section 81-2129.**

**81-5,100 Transferred to section 81-2130.**

**81-5,101 Transferred to section 81-2131.**

**81-5,102 Transferred to section 81-2132.**

**81-5,103 Transferred to section 81-2133.**

**81-5,104 Transferred to section 81-2134.**

**81-5,105 Transferred to section 81-2135.**

**81-5,106 Transferred to section 81-2136.**

**81-5,107 Transferred to section 81-2137.**

**81-5,108 Transferred to section 81-2138.**

**81-5,109 Transferred to section 81-2139.**

**81-5,110 Transferred to section 81-2140.**

**81-5,111 Transferred to section 81-2141.**

**81-5,112 Transferred to section 81-2142.**

**81-5,113 Transferred to section 81-2143.**

**81-5,114 Transferred to section 81-2144.**

(f) ARSON REPORTING IMMUNITY ACT

**81-5,115 Act, how cited.**

Sections 81-5,115 to 81-5,131 shall be known and may be cited as the Arson Reporting Immunity Act.

**Source:** Laws 1979, LB 301, § 1.

**81-5,116 Definitions; sections found.**

For purposes of sections 81-5,115 to 81-5,131, unless the context otherwise requires, the definitions found in sections 81-5,117 to 81-5,120 shall be used.

**Source:** Laws 1979, LB 301, § 2.

**81-5,117 Authorized agency, defined.**

Authorized agency shall mean:

(1) The State Fire Marshal or any local fire department investigation division when authorized or charged with the investigation of fires or explosions at the place where the fire or explosion actually took place;

(2) The colonel of the Nebraska State Patrol;

(3) The county attorney responsible for prosecutions in the county where the fire or explosion occurred; and

(4) A local law enforcement agency in the county where the fire or explosion occurred.

**Source:** Laws 1979, LB 301, § 3.

**81-5,118 Relevant, defined.**

Relevant shall mean information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

**Source:** Laws 1979, LB 301, § 4.

**81-5,119 Action, defined.**

Action shall include nonaction or the failure to take action.

**Source:** Laws 1979, LB 301, § 5.

**81-5,120 Immune, defined.**

Immune shall mean that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to sections 81-5,115 to 81-5,131 when actual malice on the part of an insurance company or authorized agency against the insured is not present.

**Source:** Laws 1979, LB 301, § 6.

**81-5,121 Authorized agency; fire or explosion loss; access to information.**

Any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession relating to the fire loss or explosion loss in question. Authorized agency for the purpose of this section shall mean, in addition to agencies included under section 81-5,117, the Federal Bureau of Investigation, any other federal agency, and the United States Attorney's office when authorized or charged with investigation or prosecution of a fire or explosion.

**Source:** Laws 1979, LB 301, § 7.

**81-5,122 Fire or explosion loss; request for information; subject matter.**

The request for information under section 81-5,121 may include, but shall not be limited to:

(1) Pertinent insurance policy information relevant to a fire loss or explosion loss under investigation and any application for such a policy;

(2) Policy premium payment records which are available;

(3) History of previous claims made by the insured; and

(4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

**Source:** Laws 1979, LB 301, § 8.

**81-5,123 Fire or explosion loss; investigation; when.**

When an insurance company has reason to believe that a fire loss or explosion loss in which it has an interest may be of other than accidental cause, the company shall, in writing, notify the State Fire Marshal or any local fire department investigation division and request an investigation. The company shall provide the State Fire Marshal or any local fire department investigation division with any or all material developed from the company's inquiry into the fire loss or explosion loss. If an insurance company provides the State Fire Marshal or any local fire department investigation division with notice of a fire loss or explosion loss, such notice shall be sufficient for the purpose of sections 81-5,115 to 81-5,131.

**Source:** Laws 1979, LB 301, § 9.

**81-5,124 Authorized agency; information; release; to whom.**

The authorized agency provided with information pursuant to section 81-5,121 or 81-5,123 and in furtherance of its own purposes may release or provide such information to any of the other authorized agencies.

**Source:** Laws 1979, LB 301, § 10.

**81-5,125 Insurance company; request for information; effect.**

Any insurance company providing information to an authorized agency or agencies pursuant to section 81-5,121 or 81-5,123 shall have the right to request relevant information and receive, within a reasonable time not to exceed thirty days, the information requested.

**Source:** Laws 1979, LB 301, § 11.

**81-5,126 Insurance company; release of information; immune from liability.**

Any insurance company, a person acting in its behalf, or an authorized agency releasing information, whether oral or written, pursuant to section 81-5,121 or 81-5,123 shall be immune from any liability arising out of a civil action or penalty resulting from a criminal prosecution.

**Source:** Laws 1979, LB 301, § 12.

**81-5,127 Authorized agency; insurance company; information; confidentiality; testimony.**

(1) Any authorized agency or insurance company which receives any information, furnished pursuant to sections 81-5,115 to 81-5,131, shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(2) Any authorized agency or its personnel may be required to testify in any litigation in which the insurance company at interest is named as a party.

**Source:** Laws 1979, LB 301, § 13.

**81-5,128 Information; refusal to release; prohibited.**

No person or agency shall intentionally or knowingly refuse to release any information requested pursuant to section 81-5,121 or 81-5,124.

**Source:** Laws 1979, LB 301, § 14.

**81-5,129 Relevant information; refusal to provide; prohibited.**

No person shall intentionally or knowingly refuse to provide authorized agencies relevant information pursuant to section 81-5,123.

**Source:** Laws 1979, LB 301, § 15.

**81-5,130 Confidential information; release; prohibited.**

No person shall fail to hold in confidence information required to be held in confidence by section 81-5,127.

**Source:** Laws 1979, LB 301, § 16.

**81-5,131 Violations; penalties.**

Any person violating sections 81-5,128 to 81-5,130 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1979, LB 301, § 17.

(g) SMOKE DETECTORS

**81-5,132 Definitions, sections found.**

As used in sections 81-5,132 to 81-5,146, unless the context otherwise requires, the definitions found in sections 81-5,133 to 81-5,139 shall apply.

**Source:** Laws 1981, LB 296, § 1.

**81-5,133 Apartment house, defined.**

Apartment house shall mean any building which is occupied as the home or residence of three or more families or persons living independently of each other and doing their own cooking in the building, and such term shall include buildings containing three or more apartments.

**Source:** Laws 1981, LB 296, § 2.

**81-5,134 Dwelling, defined.**

Dwelling shall mean any building which is not an apartment house, lodging house, hotel, or mobile home and which contains one or two dwelling units which are, or are intended or designed to be, occupied for living purposes.

**Source:** Laws 1981, LB 296, § 3.

**81-5,135 Dwelling unit, defined.**

Dwelling unit shall mean a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, or a single unit used by one or more persons for sleeping and sanitation pursuant to a work practice or labor agreement.

**Source:** Laws 1981, LB 296, § 4.

**81-5,136 Hotel, defined.**

Hotel shall mean any building, or portion thereof, containing six or more guest rooms intended or designed to be used, or which are used, rented, or

hired out to be occupied, or which are occupied for sleeping purposes by guests.

**Source:** Laws 1981, LB 296, § 5.

**81-5,137 Lodging house, defined.**

Lodging house shall mean any building, or portion thereof, containing not more than five guest rooms which are used or are intended to be used for sleeping purposes by guests and for which rent is paid in money, goods, labor, or otherwise.

**Source:** Laws 1981, LB 296, § 6.

**81-5,138 Mobile home, defined.**

Mobile home shall mean every transportable or relocatable device of any description containing complete independent living facilities for one or more persons whether or not permanently attached to the real estate upon which it is situated and shall include a manufactured home as defined in section 71-4603.

**Source:** Laws 1981, LB 296, § 7; Laws 1985, LB 313, § 27.

**81-5,139 Remodeled, defined.**

Remodeled shall mean the alteration or reconstruction of an existing building for which a building permit is required to be obtained by the local political subdivision.

**Source:** Laws 1981, LB 296, § 8.

**81-5,140 Certain mobile homes and modular housing units; exemption.**

Notwithstanding any other provision of sections 81-5,132 to 81-5,146, mobile homes constructed after September 27, 1975, and modular housing units constructed pursuant to sections 71-1555 to 71-1567 after January 10, 1977, shall be exempt from the requirements of sections 81-5,132 to 81-5,146.

**Source:** Laws 1981, LB 296, § 9; Laws 1985, LB 313, § 28.

**81-5,141 Adopt rules and regulations; administration of law; investigate violations.**

The State Fire Marshal shall adopt and promulgate rules and regulations for the administration of sections 81-5,132 to 81-5,146, including the placement of smoke detectors in dwellings, apartment houses, hotels, lodging houses, dormitories, and mobile homes. The rules and regulations shall take into account designs of the guest rooms, dwelling units, dormitories, and mobile homes. The State Fire Marshal may consider the requirements for smoke detectors developed by any national testing laboratory in adopting such rules and regulations. The State Fire Marshal shall administer the provisions of sections 81-5,132 to 81-5,146 and may delegate such responsibility to his or her authorized representative or the appropriate official charged with the duty of providing fire protection services within the local jurisdiction. The State Fire Marshal or his or her representative or the appropriate official may investigate any alleged violation of sections 81-5,132 to 81-5,146 and shall report such investigative

findings to the county attorney who shall proceed to enforce the provisions of sections 81-5,132 to 81-5,146.

**Source:** Laws 1981, LB 296, § 10.

**81-5,142 Smoke detectors; installation required; when.**

(1) Every dwelling unit within a dwelling or apartment house constructed or remodeled on or after January 1, 1982, every guest room in a lodging house or hotel constructed or remodeled on or after January 1, 1982, and every dormitory constructed or remodeled on or after January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations.

(2) Every guest room in a lodging house or hotel constructed prior to January 1, 1982, and every dormitory constructed prior to January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations on or before January 1, 1984.

(3) Every (a) dwelling unit within a dwelling or apartment house constructed prior to January 1, 1982, (b) mobile home, and (c) modular housing unit constructed pursuant to sections 71-1555 to 71-1567 shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations at the time of their remodeling or sale. In the event of a sale, the provision of smoke detectors shall be the sole responsibility of the seller, which responsibility shall not be assigned or imputed to any other party or the agent of any party to the sale.

**Source:** Laws 1981, LB 296, § 11; Laws 1985, LB 313, § 29.

**81-5,143 Smoke detector; number; location; operation.**

The detector shall be mounted in accordance with the rules and regulations regarding the number and location of smoke detectors adopted by the State Fire Marshal. When activated, the detector shall provide an alarm in the dwelling unit, guest room, dormitory, or mobile home.

**Source:** Laws 1981, LB 296, § 12.

**81-5,144 Smoke detector; rental property; responsibility for installing, maintaining, and testing; procedure.**

(1) Except as provided in subsection (2) of this section, the owner of every apartment house, dwelling, hotel, lodging house, dormitory, or mobile home or the owner's authorized agent shall be responsible for supplying, installing, maintaining, and testing the smoke detectors.

(2) In the case of a dwelling unit, guest room, hotel room, or mobile home which is being occupied for one month or more by the same occupant, it shall be the responsibility of such occupant to perform the tests on the smoke detector as are recommended by the manufacturer's instructions and immediately notify, in writing, the owner or authorized agent of any deficiencies. The owner of the dwelling, apartment house, lodging house, hotel, or mobile home shall provide a notice to such occupant containing instructions for the testing of the device. For purposes of this subsection, deficiencies shall not include a worn battery or other replaceable energy unit. The occupant shall be responsible for replacement of the battery or unit, except that such battery or unit shall

be in operating condition at the time the occupant takes possession. The owner or authorized agent shall correct any reported deficiencies in the smoke detector and shall not be in violation of sections 81-5,132 to 81-5,146 for a deficient smoke detector when he or she has not received notice of the deficiency.

(3) This section shall apply solely to rental property.

**Source:** Laws 1981, LB 296, § 13.

**81-5,145 Political subdivisions; smoke detector standards; restrictions.**

Sections 81-5,132 to 81-5,146 shall prohibit a political subdivision from adopting standards less stringent than those provided in sections 81-5,132 to 81-5,146 and rules and regulations adopted under sections 81-5,132 to 81-5,146, except that, as to buildings constructed on or after January 1, 1982, such political subdivision shall require that smoke detectors be attached to a centralized electrical power source within the building which may be equipped with a battery as an alternate power source. No political subdivision shall require that a smoke detector be attached to a centralized power source within a building constructed prior to January 1, 1982.

**Source:** Laws 1981, LB 296, § 14.

**81-5,146 Violations; penalty.**

Any person violating the provisions of sections 81-5,132 to 81-5,146 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1981, LB 296, § 15.

(h) ACCESSIBILITY STANDARDS

**81-5,147 Buildings and facilities; standards, specifications, and exclusions; adoption.**

The State Fire Marshal shall adopt and promulgate:

(1) Standards, specifications, and exclusions which are consistent with the most current uniform guidelines and standards set by the federal Americans with Disabilities Act of 1990, as amended, for (a) buildings and facilities which are newly constructed for first occupancy and (b) alterations of existing buildings and facilities used by the public. For purposes of this section, alterations of an existing building or facility used by the public shall include remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangements in the plan or configuration of the height of walls or partitions. Normal maintenance, reroofing, painting, wallpapering, asbestos removal, or changes to mechanical and electrical systems shall not be considered alterations; and

(2) Standards and specifications which are consistent with the most current uniform guidelines and standards set by the federal Fair Housing Act of 1968, as adopted by the State of Nebraska, for new constructed covered multifamily dwellings as defined in section 20-319.

**Source:** Laws 1974, LB 602, § 13; R.S.1943, (1990), § 72-1122; Laws 1993, LB 377, § 3; Laws 1998, LB 1073, § 160; Laws 2002, LB 93, § 22.

**81-5,148 Enforcement of standards and specifications; responsibility; failure to comply; effect.**

The responsibility for enforcement of the standards and specifications adopted pursuant to section 81-5,147 for (1) buildings and facilities which are newly constructed for first occupancy, (2) alterations of existing buildings and facilities used by the public, and (3) new constructed covered multifamily dwellings as defined in section 20-319 shall lie with the State Fire Marshal or the appropriate officials of the governing bodies of the state government and its political subdivisions responsible for the review and approval of the building plans. Enforcement responsibility includes an appeal process conducted by the enforcing authority for the appeal of any enforcement action or proposed enforcement action. With respect to the enforcement of section 81-5,147 as described in subdivisions (1) and (2) of this section, when plans are being reviewed for both building code and fire code regulations, the officials responsible for building code review shall be responsible for enforcement of section 81-5,147. With respect to the enforcement of section 81-5,147 as described in subdivision (3) of this section, when plans are being reviewed for both building code and fire code regulations, the officials in a city of the metropolitan, primary, or first class shall be responsible for enforcement of section 81-5,147. Officials in a city of the second class or village shall not be responsible for enforcement of section 81-5,147 as described in subdivision (3) of this section if such officials have submitted to the State Fire Marshal a written statement declaring their intent not to assume responsibility for such enforcement. When plans are being reviewed solely for fire code regulations or when the officials responsible for building code review have submitted such a written statement, the State Fire Marshal or his or her designee shall be responsible for enforcement of section 81-5,147. No official of any governing body of the state government or its political subdivisions responsible for such enforcement shall approve or authorize an occupancy permit unless such building, facility, or dwelling complies with the standards and specifications prescribed by such section. Any unauthorized departure from the standards and specifications established by the State Fire Marshal pursuant to such section may be corrected by full compliance with such standards and specifications within one hundred eighty days after discovery of such departure. Failure to correct an unauthorized departure from such standards and specifications shall result in denial or revocation of the occupancy permit for the building, facility, or dwelling.

**Source:** Laws 1965, c. 430, § 19, p. 1377; Laws 1974, LB 602, § 10; Laws 1976, LB 986, § 1; Laws 1977, LB 473, § 1; Laws 1988, LB 646, § 1; R.S.1943, (1990), § 72-1119; Laws 1993, LB 377, § 4; Laws 1998, LB 1073, § 161.

**81-5,149 Repealed. Laws 2002, LB 93, § 27.**

**81-5,150 Repealed. Laws 2002, LB 93, § 27.**

(i) TRAINING DIVISION

**81-5,151 Training division; established; purpose; State Fire Marshal; powers and duties.**

The State Fire Marshal shall establish a training division for purposes of operating a statewide training program for fire department personnel, others

involved in fire safety training, and other emergency responders that may require specialized training available from the training program for the purposes of developing, maintaining, and updating fire department skills and other skills of those emergency responders requiring specialized training available from the training program. The State Fire Marshal in establishing a training division shall (1) conduct training, (2) certify fire department personnel, (3) give technical assistance to fire departments and other emergency responders requiring specialized training available from the training program, and (4) conduct live fire training. The State Fire Marshal in establishing such training may also give technical assistance to rescue squads and respond to emergencies upon request for technical assistance. Fees for manuals and training shall be collected pursuant to section 81-5,152. Nothing in this section shall require mandatory participation by fire departments, individuals, or others interested in fire safety training or other specialized training available from the training program.

**Source:** Laws 1980, LB 724, § 2; R.S.1943, (1987), § 79-1430; Laws 1993, LB 348, § 86.

**81-5,152 Training program; fees.**

The training program as set out in section 81-5,151 for volunteer fire departments and career fire departments shall be free, except that the State Fire Marshal may charge for such books and materials given to the students, testing, or specialized courses.

The State Fire Marshal may charge a fee for providing to private fire departments training, books, materials, testing, or specialized courses.

The State Fire Marshal shall charge a fee for providing to industrial fire brigades training, books, materials, testing, and specialized courses.

**Source:** Laws 1993, LB 348, § 87.

**81-5,153 Training Division Cash Fund; created; use; investment.**

The Training Division Cash Fund is created. Money collected pursuant to section 81-5,152 shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the purpose of administering the training program established pursuant to sections 81-5,151 to 81-5,157, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The Training Division Cash Fund shall be administered by the State Fire Marshal. 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 1980, LB 724, § 3; R.S.1943, (1987), § 79-1431; Laws 1993, LB 348, § 88; Laws 2004, LB 1091, § 17; Laws 2007, LB322, § 25; Laws 2009, First Spec. Sess., LB3, § 67.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-5,154 Repealed. Laws 2002, LB 93, § 27.**

**81-5,155 Repealed. Laws 2002, LB 93, § 27.**

**81-5,156 Repealed. Laws 2002, LB 93, § 27.**

**81-5,157 Fire Service and Safety Training Program; transfer to State Fire Marshal; personnel, records, and other property; transfer.**

The Fire Service and Safety Training Program is hereby transferred to the State Fire Marshal. All personnel of the program in the State Department of Education who manage, teach, are office personnel, or are involved in the running of the program shall be transferred to the office of the State Fire Marshal on July 1, 1993.

All furniture, equipment, books, files, records, leases, and other property used by the Nebraska Fire Service shall be transferred and delivered to the State Fire Marshal on July 1, 1993.

**Source:** Laws 1993, LB 348, § 92.

#### (j) FIRE PROTECTION SYSTEMS

**81-5,158 Terms, defined.**

For purposes of sections 81-5,158 to 81-5,164:

(1) Responsible managing employee means an individual employed full time by the water-based fire protection system contractor who (a) is currently certified by the National Institute for Certification in Engineering Technologies at level III or IV in fire protection engineering technology, automatic sprinkler system layout, or another nationally recognized certification in automatic sprinkler system layout recognized by the State Fire Marshal, (b) has completed and passed an examination administered by the State Fire Marshal, and (c) is an owner, partner, or officer or in a management position of a contractor;

(2) Water-based fire protection system means a system of overhead piping: (a) Designed in accordance with fire protection engineering standards, usually activated by heat from a fire and which, when activated, discharges water over a fire area; (b) supplied from an acceptable water supply; (c) which is specially sized or hydraulically designed and installed in a building, structure, or fire area to which fire sprinklers are connected; and (d) which includes a controlling valve and usually a device for actuating an alarm when the system is in operation. Only the portion of the water-based fire protection system which is separate from the domestic water system is considered the water-based fire protection system. Water-based fire protection systems include wet-pipe systems, dry-pipe systems, foam-water systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, standpipe systems, combined standpipe and sprinkler systems, water-spray fixed systems, fire pumps, fire protection water storage tanks, antifreeze systems, and circulating closed-loop systems; and

(3) Water-based fire protection system contractor means a person engaged in the business of installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems, but does not include (a) individuals employed by and working under the direction of a contractor or (b) local building officials, fire inspectors, or insurance inspectors when acting in their official capacity.

**Source:** Laws 1997, LB 636, § 1.

**81-5,159 Contractor certificate; required; application; fee; examination; renewal; responsible managing employee.**

(1) Any water-based fire protection system contractor who installs, repairs, alters, adds to, maintains, or inspects water-based fire protection systems in this state shall first obtain a contractor certificate.

(2) A water-based fire protection system contractor may apply to the State Fire Marshal for a contractor certificate. The application shall be made on a form prescribed by the State Fire Marshal and shall include a certificate fee of up to one hundred dollars. Each applicant must designate a responsible managing employee on the application, and this individual's name shall appear on the certificate with that of the water-based fire protection system contractor upon issuance. Proof of insurance required by section 81-5,160 shall also accompany the application.

(3) Upon receipt of a complete application, proof of insurance, and certificate fee, the State Fire Marshal shall schedule a time for an examination of the responsible managing employee to demonstrate that he or she is familiar with the procedures and rules of the State Fire Marshal relating to water-based fire protection systems. If the responsible managing employee passes the examination, the State Fire Marshal shall issue the certificate to the water-based fire protection system contractor within thirty days.

(4) A certificate shall expire on September 30 of the year following issuance. An application for renewal shall be filed at least thirty days prior to expiration and shall be accompanied by a renewal fee of up to one hundred dollars and a sworn affidavit that the responsible managing employee is currently employed by the water-based fire protection system contractor. A water-based fire protection system contractor who fails to apply for renewal within the time stated in this subsection must make a new application for a certificate.

(5) A responsible managing employee may only act as such for one water-based fire protection system contractor at a time. When a responsible managing employee terminates his or her association with a water-based fire protection system contractor, the water-based fire protection system contractor shall notify the State Fire Marshal within thirty days after termination. The responsible managing employee shall not be designated as the responsible managing employee for more than two water-based fire protection system contractors in any twelve-month period. The State Fire Marshal shall revoke the certificate of a water-based fire protection system contractor whose responsible managing employee has terminated his or her association with the water-based fire protection system contractor unless an application designating a new responsible managing employee is filed within six months after termination or prior to expiration of the current certificate, whichever is earlier.

**Source:** Laws 1997, LB 636, § 2.

**81-5,160 Contractor; insurance required.**

A water-based fire protection system contractor shall maintain general and completed operations liability insurance for installation, inspection, and testing of water-based fire protection systems providing at least one million dollars of coverage.

**Source:** Laws 1997, LB 636, § 3.

**81-5,161 Sections; how construed.**

Sections 81-5,158 to 81-5,164 shall not be construed to:

- (1) Relieve any person from payment of local license or permit fees;
- (2) Limit the power of the state or political subdivisions to regulate the quality and character of work performed by water-based fire protection system contractors through a system of permits, fees, and inspections which are designed to assure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety; or
- (3) Limit the power of the state or political subdivisions to adopt any system of permits requiring submission to and approval by the state or political subdivision of plans and specifications for work to be performed by water-based fire protection system contractors before commencement of the work.

**Source:** Laws 1997, LB 636, § 4.

**81-5,162 Fees; penalties; distribution.**

Any money collected under sections 81-5,158 to 81-5,160 shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund. Any civil penalties collected under section 81-5,163 shall be remitted to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1997, LB 636, § 5.

**81-5,163 Violation; penalties.**

Any violation of sections 81-5,158 to 81-5,162 is a Class V misdemeanor. In addition, the State Fire Marshal may impose a civil penalty of up to two hundred fifty dollars for each day a violation continues. Any violation shall also constitute grounds for revocation of a contractor certificate.

**Source:** Laws 1997, LB 636, § 6.

**81-5,164 Rules and regulations.**

The State Fire Marshal shall adopt and promulgate rules and regulations to carry out sections 81-5,158 to 81-5,163.

**Source:** Laws 1997, LB 636, § 7.

**ARTICLE 6****HEALTH AND HUMAN SERVICES****Cross References**

**Department of Health and Human Services**, powers and duties generally, see Chapters 38, 43, 68, and 71 and section 81-3110 et seq.  
**State Board of Health**, see section 71-2601 et seq.

**(a) POWERS AND DUTIES**

## Section

- 81-601. Department of Health and Human Services; powers.
- 81-601.01. Repealed. Laws 1997, LB 307, § 236.
- 81-602. Department of Health and Human Services; medical schools; inspection; examination of graduates.
- 81-603. Formal grievance process for families involved in child welfare system or juvenile justice system; duties; report.
- 81-604. Repealed. Laws 1996, LB 1044, § 985.
- 81-604.01. Department of Health and Human Services; notified of facility not currently licensed; reports made; by whom; investigation.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-604.02. Division of Public Health of Department of Health and Human Services; survey and certification agency for medicare program and federal clinical laboratory requirements.
- 81-604.03. Division of Public Health of Department of Health and Human Services; survey and certification agency for medicaid program; notice of violation; duties.

### (b) MATERNITY AND INFANCY

- 81-605. Transferred to section 71-2101.
- 81-606. Transferred to section 71-2102.
- 81-607. Transferred to section 71-2103.
- 81-608. Transferred to section 71-2104.

### (c) MATERNAL AND CHILD HEALTH

- 81-609. Transferred to section 71-2201.
- 81-610. Transferred to section 71-2202.
- 81-611. Transferred to section 71-2203.
- 81-612. Transferred to section 71-2204.
- 81-613. Transferred to section 71-2205.
- 81-614. Transferred to section 71-2206.
- 81-615. Transferred to section 71-2207.
- 81-616. Transferred to section 71-2208.

### (d) DEPENDENT AND DELINQUENT CHILDREN

- 81-617. Transferred to section 43-707.
- 81-618. Transferred to section 43-708.

### (e) BRANCH LABORATORY AT SCOTTSBLUFF

- 81-619. Transferred to section 71-2301.

### (f) DRUGS

- 81-620. Transferred to section 71-2401.
- 81-621. Transferred to section 71-2402.
- 81-622. Transferred to section 71-2403.
- 81-623. Transferred to section 71-2404.
- 81-624. Transferred to section 71-2405.

### (g) POISONS

- 81-625. Transferred to section 71-2501.
- 81-626. Transferred to section 71-2502.
- 81-627. Transferred to section 71-2503.
- 81-628. Transferred to section 71-2504.
- 81-629. Transferred to section 71-2505.
- 81-630. Transferred to section 71-2506.
- 81-631. Transferred to section 71-2507.
- 81-632. Transferred to section 71-2508.
- 81-633. Transferred to section 71-2509.
- 81-634. Transferred to section 71-2510.
- 81-635. Transferred to section 71-2511.
- 81-636. Transferred to section 71-2512.

### (h) RESEARCH GRANTS

- 81-637. Cancer and smoking disease research; terms, defined.
- 81-638. Cancer and smoking disease research; appropriation; distribution; contracts; requirements.
- 81-639. Cancer and smoking disease research; department; make grants and contracts; considerations.
- 81-640. Cancer and smoking disease research; department; adopt rules and regulations.
- 81-640.01. Cancer research; legislative findings and declarations.

## HEALTH AND HUMAN SERVICES

### Section

#### (i) CANCER REGISTRY

- 81-641. Repealed. Laws 1986, LB 925, § 5.  
81-642. Cancer registry; legislative intent; information released.  
81-643. Cancer registry; terms, defined.  
81-644. Cancer registry; Department of Health and Human Services; establish and maintain; information released.  
81-645. Cancer registry; Department of Health and Human Services; duties.  
81-646. Cancer registry; hospital; health practitioner; provide data; contents.  
81-647. Cancer registry; certain data; confidential; access for research.  
81-648. Cancer registry; liability for providing information; limitation.  
81-649. Cancer registry; sections, how construed; patient and patient's family; privacy rights.  
81-649.01. Repealed. Laws 1993, LB 536, § 128.  
81-649.02. Cancer registry; hospital; failure to report; penalty.  
81-650. Cancer registry; Department of Health and Human Services; annual report.

#### (j) COMMUNITY AND HOME HEALTH SERVICES

- 81-651. Services authorized; powers.  
81-652. Home health agency; funding authorized.

#### (k) BRAIN INJURY REGISTRY

- 81-653. Act, how cited; brain injury registry; legislative intent.  
81-654. Brain injury registry; terms, defined.  
81-655. Brain injury registry; Department of Health and Human Services; establish and maintain; information released.  
81-656. Brain injury registry; Department of Health and Human Services; duties.  
81-657. Brain injury registry; physician, psychologist, hospital, and rehabilitation center; report required; contents.  
81-658. Repealed. Laws 2006, LB 1178, § 4.  
81-659. Brain injury registry; certain data; confidential; access; when.  
81-660. Brain injury registry; liability for providing information; limitation.  
81-661. Repealed. Laws 2008, LB 928, § 47.  
81-662. Brain injury; department; provide information regarding services.

#### (l) MEDICAL RECORDS AND HEALTH INFORMATION

- 81-663. Release of data; legislative findings.  
81-664. Terms, defined.  
81-665. Department of Health and Human Services; duties.  
81-666. Approved researcher; application; contents; Department of Health and Human Services; powers.  
81-667. Medical records; classification.  
81-668. Case-specific and patient-identifying data; confidentiality; aggregate data; cost.  
81-669. Case-specific and patient-identifying data; use in legal proceeding; prohibited.  
81-670. Research project; department; review.  
81-671. Release of information to public health departments and agencies; requirements.  
81-672. Receipt or release of information; immunity; exception.  
81-673. Patient and patient's family; privacy rights.  
81-674. Violations; penalty.  
81-675. Rules and regulations.

#### (m) HEALTH CARE DATA ANALYSIS

- 81-676. Health care data analysis section; established.  
81-677. Health care data analysis section; duties.  
81-678. Health care data analysis section; data and research initiatives; requirements.  
81-679. Health care data analysis section; public-sector health care programs; requirements.  
81-680. Department; contracts and grants; authorized; data collection requirements.

## Section

## (n) PARKINSON'S DISEASE REGISTRY ACT

- 81-681. Repealed. Laws 2001, LB 209, § 36.
- 81-682. Repealed. Laws 2001, LB 209, § 36.
- 81-683. Repealed. Laws 2001, LB 209, § 36.
- 81-684. Repealed. Laws 2001, LB 209, § 36.
- 81-685. Repealed. Laws 2001, LB 209, § 36.
- 81-686. Repealed. Laws 2001, LB 209, § 36.
- 81-687. Repealed. Laws 2001, LB 209, § 36.
- 81-688. Repealed. Laws 2001, LB 209, § 36.
- 81-689. Repealed. Laws 2001, LB 209, § 36.
- 81-690. Repealed. Laws 2001, LB 209, § 36.
- 81-691. Repealed. Laws 2001, LB 209, § 36.
- 81-692. Repealed. Laws 2001, LB 209, § 36.
- 81-693. Repealed. Laws 2001, LB 209, § 36.
- 81-694. Repealed. Laws 2001, LB 209, § 36.
- 81-695. Repealed. Laws 2001, LB 209, § 36.
- 81-696. Repealed. Laws 2001, LB 209, § 36.
- 81-697. Act, how cited.
- 81-698. Purpose of registry.
- 81-699. Terms, defined.
- 81-6,100. Parkinson's Disease Registry; contents.
- 81-6,101. Department; duties.
- 81-6,102. Diagnosis; report; contents.
- 81-6,103. Pharmacist; report; department; duty.
- 81-6,104. Release of data; other sections applicable.
- 81-6,105. Patient and patient's family; privacy rights.
- 81-6,106. Refusal to provide information; effect.
- 81-6,107. Immunity from liability.
- 81-6,108. Repealed. Laws 2003, LB 667, § 26.
- 81-6,109. Transition from prior law.
- 81-6,110. Costs; how paid; termination of registry; when.

## (o) OUTPATIENT SURGICAL PROCEDURES DATA ACT

- 81-6,111. Act, how cited.
- 81-6,112. Purposes of act.
- 81-6,113. Terms, defined.
- 81-6,114. Hospital and ambulatory surgical center; reports required.
- 81-6,115. Information; confidentiality.
- 81-6,116. Information; use.
- 81-6,117. Department; annual statistical report.
- 81-6,118. Costs; use in establishing licensure fees.
- 81-6,119. Rules and regulations.

## (p) TRANSPORTATION SERVICES

- 81-6,120. Transportation services; restrictions on providers; criminal history record information check required; fingerprinting; costs; release of results; violation; penalty.

## (a) POWERS AND DUTIES

**81-601 Department of Health and Human Services; powers.**

The Department of Health and Human Services shall have general supervision and control over matters relating to public health and sanitation and shall provide for examination as provided in section 81-602 and have supervision over all matters of quarantine and quarantine regulations.

**Source:** Laws 1919, c. 190, tit. VI, art. I, § 1, p. 750; C.S.1922, § 8159; C.S.1929, § 81-5601; Laws 1933, c. 149, § 5, p. 575; Laws 1941, c. 141, § 8, p. 560; C.S.Supp.,1941, § 81-927; C.S.Supp.,1941, § 81-5601; R.S.1943, § 81-601; Laws 1996, LB 1044, § 840; Laws 2007, LB296, § 730.

Under former act, orders of board of health were subject to judicial review. *Mathews v. Hedlund*, 82 Neb. 825, 119 N.W. 17 (1908); *Munk v. Frink*, 81 Neb. 631, 116 N.W. 525 (1908).

**81-601.01 Repealed. Laws 1997, LB 307, § 236.**

**81-602 Department of Health and Human Services; medical schools; inspection; examination of graduates.**

The Department of Health and Human Services shall have the right at all times to inspect the equipment and methods of teaching in all medical colleges and medical schools of the state and shall have the power to refuse examination to the graduates of any school which, on proper notice and hearing, shall be adjudged not a medical college or medical school in good standing as defined by the laws of this state.

**Source:** Laws 1919, c. 190, tit. VI, art. I, § 2, p. 750; C.S.1922, § 8160; C.S.1929, § 81-5602; R.S.1943, § 81-602; Laws 1996, LB 1044, § 842; Laws 2007, LB296, § 731.

**81-603 Formal grievance process for families involved in child welfare system or juvenile justice system; duties; report.**

The Department of Health and Human Services shall implement a formal grievance process for families involved in the child welfare system or juvenile justice system. Such grievance process shall ensure that families are not dissuaded from utilizing the grievance process for fear of reprisal from the department, providers, or foster parents. A report of each grievance allegation and the determination of and any action to be taken by the department shall be provided to the Inspector General for Nebraska Child Welfare within ten days after such determination is made.

**Source:** Laws 2013, LB269, § 11.

**81-604 Repealed. Laws 1996, LB 1044, § 985.**

**81-604.01 Department of Health and Human Services; notified of facility not currently licensed; reports made; by whom; investigation.**

Any local or state agency or department, or any private facility involved in arranging or supervising placements for those persons requiring care or supervision, shall notify the Department of Health and Human Services when there is reason to believe that the total number of persons served in any institution, facility, place, or building exceeds three individuals and that such facility is not currently licensed by the Department of Health and Human Services. The department shall investigate or inspect such complaints pursuant to the Health Care Facility Licensure Act.

**Source:** Laws 1981, LB 487, § 4; Laws 1996, LB 1044, § 843; Laws 2000, LB 819, § 154; Laws 2007, LB296, § 732.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

**81-604.02 Division of Public Health of Department of Health and Human Services; survey and certification agency for medicare program and federal clinical laboratory requirements.**

For the purpose of assisting the citizens of the state in receiving benefits under the federal medicare law, the State of Nebraska authorizes the Division of Public Health of the Department of Health and Human Services to act as the survey and certification agency for the medicare program in Nebraska and to contract to perform such functions with the federal agency responsible for administration of the medicare program and to enter into such other agreements as may be necessary to implement federal requirements. The division may also contract with the federal agency to perform survey and certification functions in accordance with the federal Clinical Laboratory Improvement Amendments of 1988.

**Source:** Laws 1989, LB 344, § 14; Laws 1994, LB 1210, § 158; Laws 1996, LB 1044, § 844; Laws 2007, LB296, § 733.

**81-604.03 Division of Public Health of Department of Health and Human Services; survey and certification agency for medicaid program; notice of violation; duties.**

The Division of Public Health of the Department of Health and Human Services is hereby authorized to act as the survey and certification agency for the medicaid program and to enter into such agreements as may be necessary to carry out its duties. On and after July 1, 2007, the division shall notify the medicaid program of any violation by a nursing facility, as defined in section 71-2097, of federal regulations for participation in the medicaid program. Civil penalties will be determined pursuant to sections 71-2097 to 71-20,101.

**Source:** Laws 1989, LB 344, § 15; Laws 1996, LB 1044, § 845; Laws 1996, LB 1155, § 77; Laws 2007, LB296, § 734.

(b) MATERNITY AND INFANCY

**81-605 Transferred to section 71-2101.**

**81-606 Transferred to section 71-2102.**

**81-607 Transferred to section 71-2103.**

**81-608 Transferred to section 71-2104.**

(c) MATERNAL AND CHILD HEALTH

**81-609 Transferred to section 71-2201.**

**81-610 Transferred to section 71-2202.**

**81-611 Transferred to section 71-2203.**

**81-612 Transferred to section 71-2204.**

**81-613 Transferred to section 71-2205.**

**81-614 Transferred to section 71-2206.**

**81-615 Transferred to section 71-2207.**

**81-616 Transferred to section 71-2208.**

## (d) DEPENDENT AND DELINQUENT CHILDREN

**81-617 Transferred to section 43-707.**

**81-618 Transferred to section 43-708.**

## (e) BRANCH LABORATORY AT SCOTTSBLUFF

**81-619 Transferred to section 71-2301.**

## (f) DRUGS

**81-620 Transferred to section 71-2401.**

**81-621 Transferred to section 71-2402.**

**81-622 Transferred to section 71-2403.**

**81-623 Transferred to section 71-2404.**

**81-624 Transferred to section 71-2405.**

## (g) POISONS

**81-625 Transferred to section 71-2501.**

**81-626 Transferred to section 71-2502.**

**81-627 Transferred to section 71-2503.**

**81-628 Transferred to section 71-2504.**

**81-629 Transferred to section 71-2505.**

**81-630 Transferred to section 71-2506.**

**81-631 Transferred to section 71-2507.**

**81-632 Transferred to section 71-2508.**

**81-633 Transferred to section 71-2509.**

**81-634 Transferred to section 71-2510.**

**81-635 Transferred to section 71-2511.**

**81-636 Transferred to section 71-2512.**

## (h) RESEARCH GRANTS

**81-637 Cancer and smoking disease research; terms, defined.**

As used in sections 81-637 to 81-640, unless the context otherwise requires:

(1) Cancer means all malignant neoplasm regardless of the tissue of origin, including malignant lymphoma and leukemia;

(2) Department means the Department of Health and Human Services; and

(3) Smoking disease means diseases whose causes are linked to smoking including, but not limited to, cardiovascular, pulmonary, and gastrointestinal diseases.

**Source:** Laws 1981, LB 506, § 1; Laws 1996, LB 1044, § 846; Laws 2007, LB296, § 735.

**81-638 Cancer and smoking disease research; appropriation; distribution; contracts; requirements.**

(1) The Legislature shall appropriate for each year from the Health and Human Services Cash Fund to the department an amount derived from one cent of the cigarette tax imposed by section 77-2602, less any amount appropriated from the fund specifically to the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The department shall, after deducting expenses incurred in the administration of such funds, distribute such funds exclusively for grants and contracts for research of cancer and smoking diseases, for funding the cancer registry prescribed in sections 81-642 to 81-650, and for associated expenses due to the establishment and maintenance of such cancer registry. Not more than two hundred thousand dollars shall be appropriated for funding the cancer registry and associated expenses. The University of Nebraska may receive such grants and contracts, and other postsecondary institutions having colleges of medicine located in the State of Nebraska may receive such contracts.

(2) The Legislature shall appropriate for each year from the Health and Human Services Cash Fund to the department for cancer research an amount derived from two cents of the cigarette tax imposed by section 77-2602 to be used exclusively for grants and contracts for research on cancer and smoking diseases. No amount shall be appropriated or used pursuant to this subsection for the operation and associated expenses of the cancer registry. Not more than one-half of the funds appropriated pursuant to this subsection shall be distributed to the University of Nebraska Medical Center for research in cancer and allied diseases and the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The remaining funds available pursuant to this subsection shall be distributed for contracts with other postsecondary educational institutions having colleges of medicine located in Nebraska which have cancer research programs for the purpose of conducting research in cancer and allied diseases.

(3) Any contract between the department and another postsecondary educational institution for cancer research under subsection (2) of this section shall provide that:

(a) Any money appropriated for such contract shall only be used for cancer research and shall not be used to support any other program in the institution;

(b) Full and detailed reporting of the expenditure of all funds under the contract is required. The report shall include, but not be limited to, separate accounting for personal services, equipment purchases or leases, and supplies. Such reports shall be made available electronically to the Legislature; and

(c) No money appropriated for such contract shall be spent for travel, building construction, or any other purpose not directly related to the research that is the subject of the contract.

**Source:** Laws 1981, LB 506, § 2; Laws 1983, LB 192, § 2; Laws 1986, LB 258, § 33; Laws 1986, LB 925, § 1; Laws 1991, LB 703, § 67; Laws 1993, LB 595, § 3; Laws 1996, LB 1044, § 847; Laws 2007, LB296, § 736; Laws 2012, LB782, § 167.

**81-639 Cancer and smoking disease research; department; make grants and contracts; considerations.**

The department when making grants and contracts pursuant to sections 81-637 to 81-640 shall consider:

- (1) The relevancy of the applicant's proposal to the furthering of research of cancer and smoking diseases;
- (2) The feasibility of the applicant's proposal;
- (3) The availability of other sources of funding for the applicant's proposal;
- (4) The facilities, personnel, and expertise available to the applicant for use in the proposal; and
- (5) Evidence of the quality of the applicant's prior or existing programs for research of cancer and smoking diseases or the applicant's potential for developing new programs for such research.

**Source:** Laws 1981, LB 506, § 3; Laws 2007, LB296, § 737.

**81-640 Cancer and smoking disease research; department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act to:

- (1) Establish an application process for grants and contracts;
- (2) Establish criteria for programs in order to receive funding;
- (3) Establish criteria as to the rates and amount of funding; and
- (4) Establish other procedures as necessary for the proper administration of sections 81-637 to 81-640.

**Source:** Laws 1981, LB 506, § 4; Laws 2007, LB296, § 738.

**Cross References**

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

**81-640.01 Cancer research; legislative findings and declarations.**

The Legislature finds and declares that:

- (1) Cancer is a disease which strikes many Nebraska families and has an extremely detrimental effect on the lives of many Nebraskans and on the economy of this state;
- (2) Cancer research is of utmost importance to Nebraskans in efforts to combat and control this serious disease;
- (3) Nebraska is fortunate to have nationally recognized programs of cancer research in colleges of medicine located in Nebraska;

(4) The promotion of diversity of research has the greatest potential for significant advancement in finding the causes of cancer and the successful treatment of the disease; and

(5) It is in the best interests of the citizens of this state to strengthen existing cancer research programs and prevent duplication of research efforts by supporting and contracting with Nebraska colleges of medicine with existing programs to provide cancer research for the improvement of public health in Nebraska.

**Source:** Laws 1993, LB 595, § 1.

(i) CANCER REGISTRY

**81-641 Repealed. Laws 1986, LB 925, § 5.**

**81-642 Cancer registry; legislative intent; information released.**

It is the intent of the Legislature to require the establishment and maintenance of a cancer registry for the State of Nebraska. This responsibility is delegated to the Department of Health and Human Services along with the authority to exercise the necessary powers to implement sections 81-642 to 81-650. To insure an accurate and continuing source of data concerning cancer, all hospitals within the state shall make available to the department upon its request, at least once a year, information contained in the medical records of patients who have cancer within such time following its diagnosis as the department shall require. Any medical doctor, osteopathic physician, or dentist within the state shall make such information available to the department upon request by the department. This cancer registry should provide a central data bank of accurate, precise, and current information which medical authorities state will assist in the research for the prevention, cure, and control of cancer. The information contained in the cancer registry may be used as a source of data for scientific and medical research. Any information released from the cancer registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

**Source:** Laws 1982, LB 212, § 1; Laws 1989, LB 342, § 38; Laws 1991, LB 703, § 68; Laws 1993, LB 536, § 113; Laws 1995, LB 406, § 87; Laws 1996, LB 1044, § 848; Laws 2007, LB296, § 739.

**81-643 Cancer registry; terms, defined.**

As used in sections 81-642 to 81-650, unless the context otherwise requires, the definitions in section 81-664 shall be used and:

(1) Cancer shall mean: (a) A large group of diseases characterized by an uncontrolled growth and spread of abnormal cells; (b) any condition of tumors having the properties of anaplasia, invasion, and metastasis; (c) a cellular tumor the natural course of which is fatal; and (d) malignant neoplasm. Cancer shall be deemed to include, but not be limited to, carcinoma, sarcoma, melanoma, lymphoma, Hodgkin's disease, and myeloma, but shall not include precancerous conditions, benign polyps, or benign tumors; and

(2) Cancer registry shall mean the system of reporting established by sections 81-642 to 81-650 in which the cases of cancer in this state are reported and

recorded in order to achieve the goals of prevention, cure, and control of cancer through research and education.

**Source:** Laws 1982, LB 212, § 2; Laws 1991, LB 703, § 69; Laws 1993, LB 536, § 114.

**81-644 Cancer registry; Department of Health and Human Services; establish and maintain; information released.**

The department shall establish and maintain a cancer registry that includes a record of the cases of cancer that occur within the state and such information concerning these cases which the department determines necessary and appropriate to provide a basic source of information to further scientific and medical research for the prevention, cure, and control of cancer. Any information released from the registry shall be disclosed as Class I, Class II, Class III, and Class IV data as provided in sections 81-663 to 81-675.

**Source:** Laws 1982, LB 212, § 3; Laws 1991, LB 703, § 70; Laws 1993, LB 536, § 115.

**81-645 Cancer registry; Department of Health and Human Services; duties.**

In order to implement the intent and purposes of sections 81-642 to 81-650, the department shall:

(1) Compile and publish a statistical report annually or at reasonable intervals containing information obtained from patient data pursuant to such sections in order to provide accessible information useful to physicians, medical personnel, and the public. Such report shall comply with sections 81-663 to 81-675;

(2) Comply with all necessary requirements in order to obtain funds or grants;

(3) Coordinate with existing statewide cancer registry programs to the extent feasible; and

(4) Consult with medical professionals, hospital tumor registries, and medical records representatives in formulating the plans and policies of the cancer registry program.

**Source:** Laws 1982, LB 212, § 4; Laws 1986, LB 925, § 2; Laws 1991, LB 703, § 71; Laws 1993, LB 536, § 116.

**81-646 Cancer registry; hospital; health practitioner; provide data; contents.**

(1) On the request of the department or its authorized representative, each medical doctor, osteopathic physician, or dentist within the state shall produce and make available to the department or its authorized representative, in a manner prescribed by the department, data which the department determines is necessary and appropriate from each medical record of cancer under the doctor's, osteopathic physician's, or dentist's custody or control.

(2) Each hospital within the state shall make available to the department or its authorized representative on presentation of proper identification of the department's representative, a list of names of cancer patients, corresponding medical records numbers, and medical records which document the diagnosis and treatment of cancer on the premises of the hospital, office, or clinic during normal working hours, for the purpose of recording specific data about a patient's cancer.

(3) Each hospital that initially diagnoses cancer made reportable by the department for more than fifty patients during a calendar year shall, for the next calendar year, at the request of the department or its authorized representative, produce and make available, in a manner prescribed by the department, data which the department determines is necessary and appropriate from each medical record of cancer under the control of the hospital. Any hospital with fewer than fifty initial diagnoses of cancer may report in the same manner.

(4) The data produced pursuant to subsection (1) of this section shall include, but not be limited to, the:

- (a) Patient's name, address, and available social security number;
- (b) Patient's hospital accession number;
- (c) Patient's birthdate, race, and sex;
- (d) Date of diagnosis;
- (e) Primary site of cancer;
- (f) Stage of the disease, including in situ, localized, regional, distant, or metastasis;
- (g) Basis of staging, including clinical diagnostic, surgical evaluative, post-surgical treatment pathological, or retreatment; and
- (h) Diagnostic confirmation.

**Source:** Laws 1982, LB 212, § 5; Laws 1986, LB 925, § 3; Laws 1989, LB 342, § 39; Laws 1995, LB 406, § 88.

**81-647 Cancer registry; certain data; confidential; access for research.**

(1) All data obtained from medical records of individual patients is for the confidential use of the department and the private or public persons or entities that the department determines may view such records as provided in sections 81-663 to 81-675.

(2) The department may approve individuals or entities to obtain access to case-specific data or case-specific and patient-identifying data to assist in their research for prevention, cure, or control of cancer. Any information released from the cancer registry shall be disclosed as provided in sections 81-663 to 81-675.

(3) For purposes of protecting the public health, local health departments in Nebraska, health departments or cancer registries located outside Nebraska, and the Centers for Disease Control and Prevention and the National Cancer Institute of the United States Department of Health and Human Services or their successors may have access to the data contained in the cancer registry upon the department's approval based on the entity's written application.

**Source:** Laws 1982, LB 212, § 6; Laws 1986, LB 925, § 4; Laws 1991, LB 703, § 72; Laws 1992, LB 1019, § 123; Laws 1993, LB 536, § 117; Laws 2006, LB 994, § 111; Laws 2007, LB 185, § 48.

**81-648 Cancer registry; liability for providing information; limitation.**

No hospital, medical doctor, osteopathic physician, or dentist nor any administrator, officer, or employee of such hospital or office in which any such professional practices take place who is in compliance with sections 81-642 to 81-650 and 81-663 to 81-675 shall be civilly or criminally liable for divulging the information required pursuant to such sections. The department or any of

its officials or employees shall not be liable civilly or criminally for the release of information contained in the cancer registry or for the conduct or activities of any individual or entity permitted access to data of the cancer registry if done pursuant to sections 81-663 to 81-675.

**Source:** Laws 1982, LB 212, § 7; Laws 1989, LB 342, § 40; Laws 1991, LB 703, § 73; Laws 1993, LB 536, § 118.

**81-649 Cancer registry; sections, how construed; patient and patient's family; privacy rights.**

Sections 81-642 to 81-650 shall not be deemed to compel any individual to submit to any medical examination or supervision by the department, any of its authorized representatives, or an approved researcher. No person who seeks information or obtains registry data pursuant to such sections or sections 81-663 to 81-675 shall contact a patient on the registry or such patient's family unless the registry has first obtained the permission of such patient or patient's family. The registry shall coordinate its activities with the person desiring such contact and may authorize the person desiring such contact to perform these contacts under the direction of the registry.

**Source:** Laws 1982, LB 212, § 8; Laws 1991, LB 703, § 74; Laws 1993, LB 536, § 119; Laws 2002, LB 1021, § 105.

**81-649.01 Repealed. Laws 1993, LB 536, § 128.**

**81-649.02 Cancer registry; hospital; failure to report; penalty.**

Any hospital which fails to make reports as provided in sections 81-642 to 81-650 shall be guilty of a Class V misdemeanor for each offense.

**Source:** Laws 1991, LB 703, § 76.

**81-650 Cancer registry; Department of Health and Human Services; annual report.**

The department shall submit electronically an annual report to the Legislature's Health and Human Services Committee with the documentation on the operation and performance of the cancer registry program established pursuant to sections 81-642 to 81-650.

**Source:** Laws 1982, LB 212, § 9; Laws 1992, LB 965, § 4; Laws 2012, LB782, § 168.

(j) COMMUNITY AND HOME HEALTH SERVICES

**81-651 Services authorized; powers.**

(1) The Department of Health and Human Services may provide visiting community nursing services or home health services to persons living in the state and may charge fees for such services. The department shall not be exempt from licensure as a home health agency under the Health Care Facility Licensure Act.

(2) The department may organize, license, and operate home health agencies to assist in providing services under subsection (1) of this section.

(3) The department (a) may employ necessary personnel, including, but not limited to, licensed nurses, physical therapists, physical therapy assistants,

audiologists, speech-language pathologists, audiology or speech-language pathology assistants, occupational therapists, occupational therapy assistants, home health aides, homemakers, respiratory care practitioners, nutritionists, social workers, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program or (b) may contract with individuals or licensed agencies to obtain such services or to assist in providing services under subsection (1) of this section.

(4) The department may contract with any public, private, for-profit, or nonprofit agency or individual to provide home health services through any licensed home health agency created under subsection (2) of this section.

**Source:** Laws 1987, LB 389, § 2; Laws 1988, LB 1100, § 179; Laws 1989, LB 429, § 41; Laws 1996, LB 1044, § 849; Laws 1996, LB 1155, § 78; Laws 1997, LB 608, § 25; Laws 2000, LB 819, § 155; Laws 2007, LB247, § 57.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

**81-652 Home health agency; funding authorized.**

The Department of Health and Human Services may (1) charge and receive fees, (2) accept third-party reimbursements or matching funds from any federal governmental agency, private corporation, or other public or private organization or entity, and (3) accept grants or donations from any public or private agency, organization, or entity for services provided by any home health agency operated by the department. Such funds shall be paid to the state treasury and credited to the Health and Human Services Cash Fund.

**Source:** Laws 1987, LB 389, § 3; Laws 1996, LB 1044, § 850; Laws 2007, LB296, § 740.

(k) BRAIN INJURY REGISTRY

**81-653 Act, how cited; brain injury registry; legislative intent.**

(1) Sections 81-653 to 81-662 shall be known and may be cited as the Brain Injury Registry Act.

(2) The intent of the Brain Injury Registry Act is to require the establishment and maintenance of a brain injury registry in and for the State of Nebraska.

(3) The purpose of the brain injury registry is to provide a central data bank of accurate, precise, and current information to assist in the statistical identification of persons with brain or head injury, planning for the treatment and rehabilitation of such persons, and the prevention of such injury.

**Source:** Laws 1992, LB 308, § 1; Laws 2008, LB928, § 33.

**81-654 Brain injury registry; terms, defined.**

For purposes of the Brain Injury Registry Act:

(1) Brain or head injury means clinically evident neurotrauma resulting directly or indirectly from closed or penetrating brain or head trauma, infection, febrile condition, anoxia, vascular lesions, toxin, or spinal cord injury, not primarily related to congenital or degenerative conditions, chemical dependen-

cy, or aging processes, which impairs mental, cognitive, behavioral, or physical functioning; and

(2) Department means the Department of Health and Human Services.

**Source:** Laws 1992, LB 308, § 2; Laws 1996, LB 1044, § 851; Laws 2007, LB296, § 741; Laws 2008, LB928, § 34.

**81-655 Brain injury registry; Department of Health and Human Services; establish and maintain; information released.**

The department shall establish and maintain the brain injury registry. The registry shall consist of information concerning persons with brain or head injury that occurs within the state. The registry shall include such information as the department deems necessary and appropriate for the statistical identification of persons with brain or head injury, planning for the treatment and rehabilitation of such persons, and the prevention of such injury. Any information released from the registry shall be disclosed as Class I, Class II, and Class IV data as provided in sections 81-663 to 81-675.

**Source:** Laws 1992, LB 308, § 3; Laws 1993, LB 536, § 120; Laws 2008, LB928, § 35.

**81-656 Brain injury registry; Department of Health and Human Services; duties.**

In order to implement the intent and purposes of the Brain Injury Registry Act, the department shall:

(1) Adopt and promulgate necessary rules and regulations to carry out the act, including, but not limited to, a uniform system of classification of brain or head injury which is consistent with medically and clinically accepted standards and definitions for use in reporting by treating medical personnel and hospitals. In adopting and promulgating such rules and regulations, the department shall be guided by the standards and definitions of the International Classification of Disease, Clinical Modification Coding System of the World Health Organization;

(2) Execute any contracts that the department deems necessary to carry out the act; and

(3) Comply with all necessary requirements in order to obtain funds or grants.

**Source:** Laws 1992, LB 308, § 4; Laws 1993, LB 536, § 121; Laws 2005, LB 301, § 66; Laws 2008, LB928, § 36.

**81-657 Brain injury registry; physician, psychologist, hospital, and rehabilitation center; report required; contents.**

(1) If a person with brain or head injury is treated in this state in the office of a physician or psychologist licensed to practice in this state but is not admitted to a hospital within this state, the treating physician or psychologist shall provide a report of such injury to the department within thirty days after such treatment and identification of the person sustaining such injury.

(2) If a person with brain or head injury is admitted to or treated at a hospital or a rehabilitation center located within a hospital in this state, such hospital or rehabilitation center shall provide a report of such injury to the department

within thirty days after the discharge of such person from the hospital or rehabilitation center.

(3) A report provided under this section shall contain the following information about the person who has sustained the brain or head injury, if known:

- (a) Name;
- (b) Date of birth;
- (c) Gender;
- (d) Residence;
- (e) Date of the injury;

(f) Final diagnosis or classification of the injury according to the International Classification of Disease, Clinical Modification Coding System of the World Health Organization, as adopted by the department;

(g) Cause of the injury and, if practicable, whether the injury resulted from an accident involving the use of alcohol;

(h) Place or site of occurrence of the injury;

(i) Identification of the reporting source;

(j) Disposition upon discharge;

(k) Payor source; and

(l) Any additional information the department deems necessary and appropriate to carry out the purposes of the Brain Injury Registry Act.

**Source:** Laws 1992, LB 308, § 5; Laws 1998, LB 1073, § 163; Laws 2001, LB 152, § 1; Laws 2006, LB 1178, § 1; Laws 2007, LB463, § 1312; Laws 2008, LB928, § 37.

**81-658 Repealed. Laws 2006, LB 1178, § 4.**

**81-659 Brain injury registry; certain data; confidential; access; when.**

No patient-identifying data as defined in section 81-664 shall be disclosed, made public, or released by the department to any public or private person or entity. All other data obtained from medical records of persons sustaining brain or head injury is for the confidential use as Class I, Class II, or Class IV data of the department and the private or public persons or entities that the department determines may view such records as provided in sections 81-663 to 81-675.

**Source:** Laws 1992, LB 308, § 7; Laws 1993, LB 536, § 122; Laws 2008, LB928, § 38.

**81-660 Brain injury registry; liability for providing information; limitation.**

No physician, psychologist, hospital, or administrator, officer, or employee of a hospital or medical professional who is in compliance with sections 81-657 and 81-663 to 81-675 shall be civilly or criminally liable for disclosing the information required under section 81-657.

**Source:** Laws 1992, LB 308, § 8; Laws 1993, LB 536, § 123; Laws 2006, LB 1178, § 2; Laws 2008, LB928, § 39.

**81-661 Repealed. Laws 2008, LB 928, § 47.**

**81-662 Brain injury; department; provide information regarding services.**

Within thirty days after receiving a report of brain or head injury, the department shall provide relevant and timely information to the person with such injury to assist such person in accessing necessary and appropriate services relating to such injury. The department may develop such information or utilize information developed by other sources and approved by the department. The department may provide such information directly or contract with an appropriate entity to provide such information. Costs associated with providing such information shall be paid from cash funds, gifts, and grants. No General Funds shall be used to pay such costs. Funds received by the department for the payment of such costs shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall not be required to provide information under this section if sufficient funding is unavailable.

**Source:** Laws 2008, LB928, § 40.

#### (I) MEDICAL RECORDS AND HEALTH INFORMATION

##### **81-663 Release of data; legislative findings.**

The Legislature finds that there is a need to establish a framework for consistent release of medical record and health information from the many registries and data bases the department maintains for the State of Nebraska. The purpose of the release of data is to encourage research which will protect the health and safety of the citizens of Nebraska by assisting in the prevention, cure, and control of specific diseases or injuries.

**Source:** Laws 1993, LB 536, § 1; Laws 1996, LB 1044, § 853; Laws 2007, LB296, § 743.

##### **81-664 Terms, defined.**

For purposes of sections 81-663 to 81-675:

(1) Aggregate data means data contained in the medical record and health information registries maintained by the department which is compiled in a statistical format and which does not include patient-identifying data;

(2) Approved researcher means an individual or entity which is approved by the department pursuant to section 81-666 to obtain access to data contained in the medical record and health information registries maintained by the department to assist in the scientific or medical research for the prevention, cure, or control of a disease or injury process;

(3) Case-specific data means data contained in the medical record and health information registries concerning a specific individual other than patient-identifying data;

(4) Department means the Department of Health and Human Services;

(5) Medical record and health information registry means the system of reporting certain medical conditions occurring in this state, as prescribed by law, which are reported and recorded in order to achieve the goals of prevention, cure, and control through research and education, and includes the birth defects registry established in section 71-646, the cancer registry established in sections 81-642 to 81-650, the brain injury registry established in the Brain Injury Registry Act, and the Parkinson's Disease Registry established in the Parkinson's Disease Registry Act;

(6) Patient-identifying data means the patient's name, address, record number, symbol, or other identifying particular assigned to or related to an individual patient; and

(7) Research means study specific to the diseases or injuries for which access to data is requested and which is dedicated to the prevention, cure, or control of the diseases or injuries.

**Source:** Laws 1993, LB 536, § 2; Laws 1996, LB 496, § 17; Laws 1996, LB 1044, § 854; Laws 2001, LB 152, § 3; Laws 2001, LB 209, § 34; Laws 2007, LB296, § 744; Laws 2008, LB928, § 41.

Cross References

Brain Injury Registry Act, see section 81-653.

Parkinson's Disease Registry Act, see section 81-697.

**81-665 Department of Health and Human Services; duties.**

To implement the intent and purposes of sections 81-663 to 81-675, the department shall:

(1) Adopt and promulgate necessary rules and regulations, including rules and regulations for the frequency and form of information submitted and for standards and procedures for approving researchers;

(2) Execute contracts that the department considers necessary; and

(3) Receive and record the data obtained from the medical and health information records of persons with particular diseases or injuries.

**Source:** Laws 1993, LB 536, § 3.

**81-666 Approved researcher; application; contents; Department of Health and Human Services; powers.**

The department may approve an individual or entity to be an approved researcher upon application and proof satisfactory to the department that the applicant is a qualified researcher, that the data will be used for bona fide scientific or medical research for prevention, cure, or control of certain diseases or injuries, and that the applicant will maintain the confidentiality and security of data obtained. The application shall contain, but not be limited to, the following information:

(1) The qualifications of the applicant and of the principal investigator, if other than the applicant, including education, experience, prior publications, and recommendations of professional colleagues who have knowledge and experience of scientific or medical research;

(2) The purpose of the research project, a summary of the project, and the anticipated time of completion of such project;

(3) The location where the research project will be conducted and the equipment, personnel, and other resources available to the applicant to carry out the project;

(4) The identity of the individual or entity funding the research project, a description of the availability of funds for the research project, and any conditions on the receipt or continuation of such funding;

(5) The specific data requested and a description of the use to be made of such data and, if patient-identifying data is requested, a substantiation of the need for access to such patient-identifying data;

(6) A description of the measures to be taken to secure the data and maintain the confidentiality of such data during the research project, for disposal of the data upon completion of the study, and to assure that the results of the study will not divulge or make public information that will disclose the identity of any individual patient;

(7) If contact with a patient or patient's family is planned or expected, substantiation of the need for such contact and a description of the method to be used to obtain permission from such patient or patient's family for such contact; and

(8) Such additional information as the department determines to be necessary to assure that release of data to the applicant is appropriate and will further the purpose of sections 81-663 to 81-675 or the laws governing the specific registry.

**Source:** Laws 1993, LB 536, § 4; Laws 2002, LB 1021, § 106.

#### **81-667 Medical records; classification.**

Medical records provided to the department for use in its medical record and health information registries shall be classified for release according to the following categories:

(1) Class I data shall be confidential with release only in aggregate data reports created by the department on a periodic basis, usually specified in the statutes creating the registry. These reports shall be public documents;

(2) Class II data shall be confidential with release only in aggregate data reports created by the department at the request of an individual. These reports shall be public documents;

(3) Class III data shall be confidential with release of patient-identifying data to approved researchers for specific research projects. The approved researcher shall maintain the confidentiality of the information; and

(4) Class IV data shall be confidential with release of case-specific data to approved researchers for specific research projects. The approved researcher shall maintain the confidentiality of the data.

**Source:** Laws 1993, LB 536, § 5.

#### **81-668 Case-specific and patient-identifying data; confidentiality; aggregate data; cost.**

All case-specific and patient-identifying data obtained from medical records of individual patients shall be for the confidential use of the department, those reporting data to the department, and the public health agencies and approved researchers that the department determines may view such records in order to carry out the intent of sections 81-663 to 81-675. Such information shall be privileged and shall not otherwise be divulged or made public so as to disclose the identity of an individual whose medical records and health information have been used for acquiring such data. Aggregate data collected shall be open and accessible to the public, and such information shall not be considered medical records pursuant to section 84-712.05. The cost of data retrieval and data processing shall be paid by the data requester.

Case-specific and patient-identifying data may be released to those individuals or entities who have reported information to the department. Such data may

be released for the purpose of confirming the accuracy of the data provided and to coordinate information among sources.

**Source:** Laws 1993, LB 536, § 6; Laws 2006, LB 994, § 112.

**81-669 Case-specific and patient-identifying data; use in legal proceeding; prohibited.**

All case-specific and patient-identifying data furnished and any findings or conclusions resulting from such data shall be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind, and any attempt to use or offer any such information, findings, conclusions, or any part thereof, unless waived by the interested parties, shall constitute prejudicial error resulting in a mistrial in any such proceeding.

**Source:** Laws 1993, LB 536, § 7.

**81-670 Research project; department; review.**

The approved researcher shall submit the reports or results of the research project to the department. The department shall review such reports or results and shall prohibit publication of confidential information. The approved researcher shall acknowledge the department and its medical record and health information registries in any publication in which information obtained from the medical record and health information registries is used.

**Source:** Laws 1993, LB 536, § 8.

**81-671 Release of information to public health departments and agencies; requirements.**

(1) Except as otherwise provided by the law governing a specific medical record and health information registry, the department may release information contained in a registry to official public health departments and agencies as follows:

(a) Upon request by an official local health department within the State of Nebraska, the department may release such data to the requesting local health department. The official local health department shall not contact patients using data received under sections 81-663 to 81-675 without approval by the department of an application made pursuant to section 81-666; and

(b) Upon approval of an application by federal, state, or local official public health agencies made pursuant to section 81-666, the department may release such data.

(2) Except as provided in subsection (3) of this section, the receiving agency shall not further disclose such data to any third party but may publish aggregate statistical reports, except that no patient-identifying data shall be divulged, made public, or released to any public or private person or entity. The receiving agency shall comply with the patient contact provisions of sections 81-663 to 81-675. The receiving agency shall acknowledge the department and its medical record and health information registries in any publication in which information obtained from the medical record and health information registries is used.

(3) The release and acknowledgment provisions of this section do not apply to the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services,

the North American Association of Central Cancer Registries, or cancer registries located outside Nebraska which receive data through approved data exchange agreements.

**Source:** Laws 1993, LB 536, § 9; Laws 2006, LB 994, § 113; Laws 2007, LB185, § 49; Laws 2008, LB797, § 28.

**81-672 Receipt or release of information; immunity; exception.**

Any person who receives or releases information in the form and manner prescribed by sections 81-663 to 81-675 and the rules and regulations adopted and promulgated pursuant to such sections shall not be civilly or criminally liable for such receipt or release unless the receipt or release is done with actual malice, fraudulent intent, or bad faith. In an action brought against a person for wrongful receipt or release of medical record and health information registry information, the party bringing the action shall plead specifically the allegation that the immunity provided in this section does not apply because the person receiving or releasing the information did so with actual malice, fraudulent intent, or bad faith.

**Source:** Laws 1993, LB 536, § 10; Laws 2001, LB 152, § 4.

**81-673 Patient and patient's family; privacy rights.**

Nothing in sections 81-663 to 81-675 shall be deemed to compel any individual to submit to any medical examination or supervision by the department, any of its authorized representatives, or an approved researcher. No person who seeks information or obtains registry data pursuant to such sections shall contact a patient on the registry or such patient's family unless the registry has first obtained the permission of such patient or patient's family. The registry shall coordinate its activities with the person desiring such contact and may authorize the person desiring such contact to perform these contacts under the direction of the registry.

**Source:** Laws 1993, LB 536, § 11; Laws 2002, LB 1021, § 107.

**81-674 Violations; penalty.**

Any private or public entity, individual, or approved researcher who wrongfully discloses confidential data obtained from the medical record and health information registries or uses such information with the intent to deceive shall be guilty of a Class IV misdemeanor for each offense.

**Source:** Laws 1993, LB 536, § 12.

**81-675 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to implement sections 81-663 to 81-674.

**Source:** Laws 1993, LB 536, § 13.

(m) HEALTH CARE DATA ANALYSIS

**81-676 Health care data analysis section; established.**

The Department of Health and Human Services shall establish a health care data analysis section to conduct data and research initiatives in order to improve the efficiency and effectiveness of health care in Nebraska.

**Source:** Laws 1994, LB 1223, § 122; Laws 1996, LB 1044, § 855; Laws 2007, LB296, § 745.

**81-677 Health care data analysis section; duties.**

The Department of Health and Human Services, through the health care data analysis section, shall:

- (1) Conduct research using existing health care data bases and promote applications based on existing research;
- (2) Work closely with health plans and health care providers to promote improvements in health care efficiency and effectiveness;
- (3) Participate as a partner or sponsor of private-sector initiatives that promote applied research on health care delivery, outcomes, costs, quality, and management; and
- (4) Provide technical assistance as needed.

**Source:** Laws 1994, LB 1223, § 123; Laws 1996, LB 1044, § 856; Laws 2007, LB296, § 746.

**81-678 Health care data analysis section; data and research initiatives; requirements.**

Data and research initiatives by the health care data analysis section of the Department of Health and Human Services shall:

- (1) Promote applied research on health care delivery, outcomes, costs, quality, and management;
- (2) Conduct research and promote health care applications based on scientifically sound and statistically valid methods;
- (3) Emphasize data that is useful and relevant and is not redundant of existing data;
- (4) Be structured to minimize the administrative burden on health plans, health care providers, and the health care delivery system; and
- (5) Promote continuous improvement in the efficiency and effectiveness of health care delivery.

**Source:** Laws 1994, LB 1223, § 124; Laws 1996, LB 1044, § 857; Laws 2007, LB296, § 747.

**81-679 Health care data analysis section; public-sector health care programs; requirements.**

Data and research initiatives by the health care data analysis section of the Department of Health and Human Services related to public-sector health care programs shall:

- (1) Assist the state's current health care financing and delivery programs to deliver and purchase health care in a manner that promotes improvements in health care efficiency and effectiveness;
- (2) Assist the state in its public health activities, including the analysis of disease prevalence and trends and the development of public health responses;
- (3) Assist the state in developing and refining its overall health policy, including policy related to health care costs, quality, and access; and
- (4) Provide health care information that allows the evaluation of state health care financing and delivery programs.

**Source:** Laws 1994, LB 1223, § 125; Laws 1996, LB 1044, § 858; Laws 2007, LB296, § 748.

**81-680 Department; contracts and grants; authorized; data collection requirements.**

(1) To carry out the duties assigned under sections 81-677 to 81-679, the Department of Health and Human Services may contract with or provide grants to private-sector entities.

(2) The health care data analysis section of the department shall negotiate with private-sector organizations currently collecting data on specific health conditions of interest to the section in order to obtain required data in a cost-effective manner and minimize administrative costs. The section shall support linkages between existing private-sector data bases and shall consider and implement methods to streamline data collection in order to reduce public-sector and private-sector administrative costs.

(3) The health care data analysis section shall use existing public-sector data bases, such as those existing for the medical assistance program and medicare, to the greatest extent possible. The section shall support linkages between existing public-sector data bases and consider and implement methods to streamline public-sector data collection in order to reduce public-sector and private-sector administrative costs.

**Source:** Laws 1994, LB 1223, § 126; Laws 1996, LB 1044, § 859; Laws 2007, LB296, § 749.

**(n) PARKINSON'S DISEASE REGISTRY ACT**

**81-681 Repealed. Laws 2001, LB 209, § 36.**

**81-682 Repealed. Laws 2001, LB 209, § 36.**

**81-683 Repealed. Laws 2001, LB 209, § 36.**

**81-684 Repealed. Laws 2001, LB 209, § 36.**

**81-685 Repealed. Laws 2001, LB 209, § 36.**

**81-686 Repealed. Laws 2001, LB 209, § 36.**

**81-687 Repealed. Laws 2001, LB 209, § 36.**

**81-688 Repealed. Laws 2001, LB 209, § 36.**

**81-689 Repealed. Laws 2001, LB 209, § 36.**

**81-690 Repealed. Laws 2001, LB 209, § 36.**

**81-691 Repealed. Laws 2001, LB 209, § 36.**

**81-692 Repealed. Laws 2001, LB 209, § 36.**

**81-693 Repealed. Laws 2001, LB 209, § 36.**

**81-694 Repealed. Laws 2001, LB 209, § 36.**

**81-695 Repealed. Laws 2001, LB 209, § 36.**

**81-696 Repealed. Laws 2001, LB 209, § 36.**

**81-697 Act, how cited.**

Sections 81-697 to 81-6,110 shall be known and may be cited as the Parkinson's Disease Registry Act.

**Source:** Laws 2001, LB 152, § 5.

**81-698 Purpose of registry.**

The purpose of the Parkinson's Disease Registry is to provide a central data bank of accurate, historical and current information for research purposes. The Parkinson's Disease Registry Act will provide for screening and collecting patient and family data that may be useful in detecting the incidence of and possible risk factors concerning Parkinson's disease and related movement disorders. The act will also aid in planning for health care requirements and education needs.

**Source:** Laws 2001, LB 152, § 6.

**81-699 Terms, defined.**

For purposes of the Parkinson's Disease Registry Act:

(1) Approved researcher means an individual or entity who is approved by the department in accordance with section 81-666 to obtain access to data contained in the Parkinson's Disease Registry to assist in scientific or medical research for the prevention, cure, or control of Parkinson's disease;

(2) Department means the Department of Health and Human Services;

(3) Parkinson's disease means a chronic, progressive disorder in which there is a lack of the chemical dopamine in the brain as a direct result of the destruction of the dopamine-producing cells in the portion of the brain called the substantia nigra. Clinical features of the disease include tremor at rest, slow movements, rigidity, and unsteady or shuffling gait and may be indicated by improvement after using medications used for Parkinson's disease; and

(4) Related movement disorder means a disorder that resembles Parkinson's disease in some way, such as another kind of tremor.

**Source:** Laws 2001, LB 152, § 7; Laws 2007, LB296, § 750.

**81-6,100 Parkinson's Disease Registry; contents.**

The department shall establish and maintain the Parkinson's Disease Registry. The registry shall consist of a compilation of the reports of cases of Parkinson's disease and related movement disorders occurring among residents of this state which are with the department. The registry shall include information the department deems necessary and appropriate for the statistical identification and planning for treatment and education of health care providers and persons diagnosed with Parkinson's disease and related movement disorders.

**Source:** Laws 2001, LB 152, § 8.

**81-6,101 Department; duties.**

The department shall:

(1) Adopt and promulgate rules and regulations, including a uniform system of classification of Parkinson's disease which is consistent with medically and clinically accepted standards and definitions for use in reporting by medical personnel treating the disease;

(2) Execute any contracts that the department deems necessary to carry out the Parkinson's Disease Registry Act;

(3) Receive and record the data obtained from reports filed under sections 81-6,102 and 81-6,103; and

(4) Comply with all necessary requirements to obtain funds or grants.

**Source:** Laws 2001, LB 152, § 9; Laws 2005, LB 301, § 67.

**81-6,102 Diagnosis; report; contents.**

(1) If a resident of this state is diagnosed with Parkinson's disease or a related movement disorder within this state in the office of a physician licensed under the Uniform Credentialing Act, the physician shall file a report of the diagnosis and pertinent information with the department within sixty days after the diagnosis.

(2) An individual resident of this state who has been diagnosed with Parkinson's disease or a related movement disorder by a licensed physician may file a report with the department providing relevant information. The department shall provide for validation of individual reports.

(3) A report filed under this section shall contain the following information about the person diagnosed with Parkinson's disease or a related movement disorder:

(a) Name;

(b) Social security number;

(c) Date of birth;

(d) Gender;

(e) Address at time of diagnosis;

(f) Current address;

(g) Date of diagnosis;

(h) Physician;

(i) Identification of reporting source; and

(j) Any additional information the department demonstrates is reasonable to implement the Parkinson's Disease Registry Act.

**Source:** Laws 2001, LB 152, § 10; Laws 2007, LB463, § 1313.

**Cross References**

**Uniform Credentialing Act**, see section 38-101.

**81-6,103 Pharmacist; report; department; duty.**

The pharmacist in charge of each pharmacy located within the state or doing business in the state shall file a semiannual report with the department listing persons to whom the pharmacist has dispensed drugs on the list of drugs required to be reported under this section for Parkinson's disease. The report shall include the name, address, and social security number of the person for whom the drugs were prescribed and the name and address of the prescribing physician. The department shall issue a list of drugs used for the treatment of Parkinson's disease to be reported under this section, shall review and revise

the list annually, and shall distribute the list to each pharmacy located within the state or doing business in the state.

**Source:** Laws 2001, LB 152, § 11.

**81-6,104 Release of data; other sections applicable.**

All data and information developed or collected pursuant to the Parkinson's Disease Registry Act and the receipt and release of data from the Parkinson's Disease Registry is subject to and shall comply with sections 81-663 to 81-675. For purposes of the Parkinson's Disease Registry, data may be released as Class I data, Class II data, Class III data, or Class IV data as classified in section 81-667.

**Source:** Laws 2001, LB 152, § 12.

**81-6,105 Patient and patient's family; privacy rights.**

Nothing in the Parkinson's Disease Registry Act shall be deemed to compel any individual to submit to any medical examination or supervision by the department, any of its authorized representatives, or an approved researcher. No person who seeks information or obtains registry data pursuant to the act shall contact a patient on the registry or such patient's family unless the registry has first obtained the permission of such patient or patient's family. The registry shall coordinate its activities with the person desiring such contact and may authorize the person desiring such contact to perform these contacts under the direction of the registry.

**Source:** Laws 2001, LB 152, § 13; Laws 2002, LB 1021, § 108.

**81-6,106 Refusal to provide information; effect.**

Nothing in the Parkinson's Disease Registry Act requires a physician or pharmacist to deny medical treatment or services to an individual who refuses to provide the information necessary to make complete reports required under section 81-6,102 or 81-6,103.

**Source:** Laws 2001, LB 152, § 14.

**81-6,107 Immunity from liability.**

Any physician or pharmacist required to make reports under section 81-6,102 or 81-6,103 is immune from liability, civil, criminal, or otherwise, for filing an incomplete report as a result of the failure of an individual to provide the information necessary to make such report.

**Source:** Laws 2001, LB 152, § 15; Laws 2003, LB 667, § 23.

**81-6,108 Repealed. Laws 2003, LB 667, § 26.**

**81-6,109 Transition from prior law.**

(1) On and after May 26, 2001, for purposes of the Parkinson's Disease Registry Act:

(a) Any rules, regulations, and orders of the Department of Health and Human Services Regulation and Licensure adopted pursuant to the former Parkinson's Disease Registry Act, as such act existed prior to February 14, 2001, and in effect on February 13, 2001, shall be revived and continue in effect until revised, amended, repealed, or nullified pursuant to law;

(b) Any contracts entered into by the department prior to February 14, 2001, and in effect on February 13, 2001, in connection with the duties and functions of the former act are recognized and may be revived upon the agreement of all contract parties. If revived, the department shall succeed to all rights and obligations under such contracts;

(c) Any cash funds, custodial funds, gifts, trusts, grants, and appropriations of funds which were available for use by the department for purposes of the former act shall continue to be available for use by the department if such funds continue to exist; and

(d) Any documents created, information compiled, or property used by the department under the former act shall continue to be available to and may be used by the department.

(2) For purposes of this section, former act means the Parkinson's Disease Registry Act, as such act existed prior to February 14, 2001, which act was outright repealed in Laws 2001, LB 209.

**Source:** Laws 2001, LB 152, § 17.

**81-6,110 Costs; how paid; termination of registry; when.**

Costs associated with administration of the Parkinson's Disease Registry Act shall be paid from cash funds, contract receipts, gifts, and grants. No general funds shall be used to pay such costs. Funds received by the department for the payment of such costs shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Notwithstanding any other provision of the act, the Parkinson's Disease Registry and all duties related to the administration of such registry and such act shall cease as of June 30 of any year in which the department has insufficient funds on hand to perform its duties under the act for the next fiscal year, after providing thirty days' written notice to each approved researcher who has contracted with the department under section 81-6,101 in the current biennium.

**Source:** Laws 2001, LB 152, § 18; Laws 2003, LB 667, § 24; Laws 2007, LB296, § 751.

(o) OUTPATIENT SURGICAL PROCEDURES DATA ACT

**81-6,111 Act, how cited.**

Sections 81-6,111 to 81-6,119 shall be known and may be cited as the Outpatient Surgical Procedures Data Act.

**Source:** Laws 2003, LB 73, § 1.

**81-6,112 Purposes of act.**

The purposes of the Outpatient Surgical Procedures Data Act are to provide for: (1) The collection and compilation of outpatient surgical procedure information from hospitals and ambulatory surgical centers; (2) the use and disclosure of such information for public health purposes; and (3) periodic reporting to the Legislature and an annual statistical report.

**Source:** Laws 2003, LB 73, § 2.

**81-6,113 Terms, defined.**

For purposes of the Outpatient Surgical Procedures Data Act:

- (1) Department means the Department of Health and Human Services;
- (2) Medicaid means the medical assistance program established pursuant to the Medical Assistance Act;
- (3) Medicare means Title XVIII of the federal Social Security Act, as such title existed on January 1, 2003;
- (4) Outpatient surgical procedure means a surgical procedure provided to patients who do not require inpatient hospitalization;
- (5) Primary payor means the public payor or private payor which is expected to be responsible for the largest percentage of the patient's current bill;
- (6) Private payor means any nongovernmental source of funding; and
- (7) Public payor means medicaid, medicare, and any other governmental source of funding.

**Source:** Laws 2003, LB 73, § 3; Laws 2006, LB 1248, § 88; Laws 2007, LB296, § 752.

**Cross References**

Medical Assistance Act, see section 68-901.

**81-6,114 Hospital and ambulatory surgical center; reports required.**

(1) Every hospital or ambulatory surgical center licensed under the Health Care Facility Licensure Act shall annually report the following outpatient surgical and related information to the department no later than May 1 of each year for the preceding calendar year in a format as prescribed by the department in rule and regulation:

- (a) The name of the reporting facility;
- (b) The facility portion of billed charges for each patient served at such facility;
- (c) The county and state of residence by zip code for each patient served at such facility;
- (d) The primary outpatient surgical procedure performed for each patient at such facility;
- (e) The primary payor for each patient served at such facility; and
- (f) Such other outpatient surgical information as voluntarily reported by such facilities.

(2) The department may impose a late fee for failure to report such information as required by this section.

**Source:** Laws 2003, LB 73, § 4.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

**81-6,115 Information; confidentiality.**

All information reported to the department pursuant to section 81-6,114 shall be privileged communications, shall not be discoverable or subject to subpoena, and may not be used or offered or received in evidence in any legal proceeding of any kind or character. Such information shall remain confidential with the

department and shall not be disclosed except as provided in sections 81-6,116 and 81-6,117.

**Source:** Laws 2003, LB 73, § 5.

**81-6,116 Information; use.**

(1) Information reported under section 81-6,114 may be used by the department for statistical and public health planning purposes and for other public health purposes as identified by the department in rule and regulation.

(2) The department shall periodically review information collected under section 81-6,114 for the purpose of identifying potential policies or practices of any reporting facility which may be detrimental to the public health, including, but not limited to, policies and practices which may have the effect of limiting access to needed health care services for Nebraska residents. The department shall provide electronically recommendations to the Health and Human Services Committee of the Legislature relating to appropriate administrative and legislative responses to such policies and practices and shall provide electronically an annual report to the chairperson of such committee of its findings and its current or planned activities under this section, if any.

**Source:** Laws 2003, LB 73, § 6; Laws 2012, LB782, § 169.

**81-6,117 Department; annual statistical report.**

The department shall publish an annual statistical report from information collected under section 81-6,114 which shall include: (1) The twenty most frequently performed outpatient surgical procedures by type of procedure; (2) the total number of persons served for each listed procedure; (3) the total number of persons served by county and state of residence and region of service; and (4) the average billed charges for such procedures by county and state of residence. The department shall designate service regions for the purpose of aggregating and reporting information as required by this section. No information shall be published or disclosed by the department under this section in a manner that identifies or may be used to identify any individual hospital or ambulatory surgical center.

**Source:** Laws 2003, LB 73, § 7.

**81-6,118 Costs; use in establishing licensure fees.**

Costs associated with implementation of the Outpatient Surgical Procedures Data Act may be considered by the department in determining variable costs for purposes of establishing licensure fees under section 71-434 and shall not require an appropriation of General Funds.

**Source:** Laws 2003, LB 73, § 8.

**81-6,119 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to implement the Outpatient Surgical Procedures Data Act. Such rules and regulations shall comply with all applicable provisions of federal law and shall minimize the imposition of additional costs to reporting facilities.

**Source:** Laws 2003, LB 73, § 9.

## (p) TRANSPORTATION SERVICES

**81-6,120 Transportation services; restrictions on providers; criminal history record information check required; fingerprinting; costs; release of results; violation; penalty.**

(1) No individual who has been convicted of a felony or of any crime involving moral turpitude, or who has been charged with or indicted for a felony or crime involving moral turpitude and there has been no final resolution of the prosecution of the crime, shall provide transportation services under contract with the Department of Health and Human Services, whether as an employee or as a volunteer, for vulnerable adults as defined in section 28-371 or for persons under nineteen years of age.

(2) In order to assure compliance with subsection (1) of this section, any individual who will be providing such transportation services to such vulnerable adults or persons under nineteen years of age and any individual who is providing such services on August 30, 2009, shall be subject to a national criminal history record information check by the Department of Health and Human Services through the Nebraska State Patrol.

(3) In addition to the national criminal history record information check required in subsection (2) of this section, all individuals employed to provide transportation services under contract with the Department of Health and Human Services to vulnerable adults or persons under nineteen years of age shall submit to a national criminal history record information check every two years during the period of such employment.

(4) Individuals shall submit two full sets of fingerprints to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for the national criminal history record information check required under this section. The individual shall pay the actual cost of fingerprinting and the national criminal history record information check.

(5)(a) Individuals shall authorize release of the results and contents of a national criminal history record information check under this section to the employer and the Department of Health and Human Services as provided in this section.

(b) The Nebraska State Patrol shall not release the contents of a national criminal history record information check under this section to the employer or the individual but shall only indicate in writing to the employer and the individual whether the individual has a criminal record.

(c) The Nebraska State Patrol shall release the results and the contents of a national criminal history record information check under this section in writing to the department in accordance with applicable federal law.

(6) The Department of Health and Human Services may develop and implement policies that provide for administrative exceptions to the prohibition in subsection (1) of this section, including, but not limited to, situations in which relatives of the vulnerable adult or person under nineteen years of age provide transportation services for such vulnerable adult or person under nineteen years of age or situations in which the circumstances of the crime or the elapsed time since the commission of the crime do not warrant the prohibition. Any decision made by the department regarding an administrative exception under this section is discretionary and is not appealable.

(7) An individual who does not comply with this section is guilty of a Class V misdemeanor.

**Source:** Laws 2009, LB97, § 30.

## ARTICLE 7 DEPARTMENT OF ROADS

### Cross References

**Build Nebraska Act**, see section 39-2701.

**Department of Aeronautics**, contract for maintenance of airports and engineering service, see section 3-116.

**Department of Roads, powers and duties with respect to:**

Cities and villages, contract for subways and viaducts, see section 18-601 et seq.

County roads:

Barricading, see sections 39-1728 and 39-1901.

Contract lettings, see sections 39-1407 and 39-1503.

Designation, see section 39-2001 et seq.

**Electrical and other utility facilities along state or federal highways**, see sections 39-1304.02, 70-309, and 86-707.

**Gasohol use**, see sections 66-821 to 66-824.

**Highway Cash Fund**, allocation and use, see section 66-4,100.

**Highway Trust Fund**, see section 39-2215.

**Highways and bridges**, generally, see Chapter 39.

**Historical markers**, duties, see section 82-120.

**Political subdivisions**, agreements with, see section 39-1307.

**Public lettings**, see Chapter 73.

**Public transportation assistance program**, see section 13-1209 et seq.

**Railroad grade crossings**, see Chapter 74, article 13.

**Real property**, sale provisions, see section 39-1325 et seq.

**Relocation Assistance Act**, see section 76-1214.

**Roads Operations Cash Fund**, see section 66-4,100.

**Rules of the Road, Nebraska**, see section 60-601.

**School bus routes**, duty to post signs, see section 79-604.

**School lands**, acquisition for highways, see section 72-221.

**State Highway Capital Improvement Fund**, see section 39-2703.

**State Highway Commission**, see section 39-1101 et seq.

**State institutions**, highways adjacent to, improvement, see section 83-137.

**State Patrol, Nebraska**, see section 81-2001 et seq.

**State sales tax revenue**, allocated for roads, see section 77-27,132.

**Telecommunications lines along state or federal highways**, see sections 39-1304.02 and 86-707.

**Unmarked Human Burial Sites and Skeletal Remains Protection Act**, duties of department, see section 12-1201 et seq.

**Weighing stations**, see section 60-1301 et seq.

### (a) GENERAL POWERS

#### Section

81-701. Repealed. Laws 1955, c. 148, § 63.

81-701.01. Department of Roads; Director-State Engineer; control, management, supervision, administration.

81-701.02. Director-State Engineer; powers; duties.

81-701.03. Department of Roads; assume highway safety program of Department of Motor Vehicles.

81-701.04. Department of Roads; fees; deposited with State Treasurer; credited to Highway Cash Fund.

81-701.05. Nebraska Railway Council agreement with railroad; oversight.

81-701.06. Repealed. Laws 1995, LB 15, § 6.

### (b) NATURAL LAKES

81-702. Transferred to section 46-801.

81-703. Transferred to section 46-802.

81-704. Transferred to section 46-803.

81-705. Transferred to section 46-804.

81-706. Transferred to section 46-805.

81-707. Transferred to section 46-806.

81-708. Transferred to section 46-807.

### (c) HIGHWAYS; SALVAGED MATERIAL

81-709. Repealed. Laws 1955, c. 148, § 63.

Section

## (d) STATE WAYSIDE AREAS

- 81-710. State wayside areas; powers and duties of department; rules and regulations; contracts authorized.
- 81-711. State wayside areas; requirements.

## (a) GENERAL POWERS

**81-701 Repealed. Laws 1955, c. 148, § 63.****81-701.01 Department of Roads; Director-State Engineer; control, management, supervision, administration.**

The Director-State Engineer shall have full control, management, supervision, administration, and direction of the Department of Roads. All powers and duties lawfully conferred upon the department shall be exercised under the direction of the Director-State Engineer.

**Source:** Laws 1955, c. 338, § 1, p. 1050; Laws 1957, c. 365, § 11, p. 1238.

**81-701.02 Director-State Engineer; powers; duties.**

The Director-State Engineer, for the Department of Roads, shall:

- (1) Have charge of the records of the department;
- (2) Cause accurate and complete books of account to be kept;
- (3) Supervise the signing of vouchers and orders for supplies, materials, and any other expenditures;
- (4) Contract for consulting services;
- (5) Employ all engineers, assistants, clerks, agents, and other employees required for the proper transaction of the business of his office or of the department and fix their titles, determine their duties and compensation, and discharge them in his discretion; and
- (6) Sign and execute or supervise the signing and executing of all documents and papers, including contracts and agreements for highway construction and the purchase of machinery, materials, and supplies.

**Source:** Laws 1955, c. 338, § 2, p. 1050; Laws 1957, c. 365, § 12, p. 1238.

## Cross References

**Geographic Information System Steering Committee**, member of, see section 86-570.

**Salary**, see section 81-103.

**State Emergency Response Commission**, member of, see section 81-15,210.

**State Highway Commission**, member of, see section 39-1101.

**81-701.03 Department of Roads; assume highway safety program of Department of Motor Vehicles.**

Beginning on July 1, 2009, the Department of Roads shall assume responsibility for the powers and duties of the highway safety program of the Department of Motor Vehicles, except that the Department of Motor Vehicles shall retain jurisdiction over the Motorcycle Safety Education Act.

**Source:** Laws 2009, LB219, § 2.

## Cross References

**Motorcycle Safety Education Act**, see section 60-2120.

**81-701.04 Department of Roads; fees; deposited with State Treasurer; credited to Highway Cash Fund.**

There shall be paid to the Department of Roads in advance for the services of the department, or any officer or employee thereof by the party demanding or necessitating the service the following fees: For typing a transcript or copy of any instrument recorded or filed in any office of the department, fifteen cents for each one hundred words; for blueprint copy of any map or drawing, or photostatic copy of any record, a reasonable sum to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction; for other copies of drawing, two dollars per hour for the time actually employed; and for certificate and seal, one dollar. The Director-State Engineer shall keep a record of all fees received. Such fees shall be currently deposited with the State Treasurer by the Director-State Engineer for the use of the Highway Cash Fund and the Director-State Engineer shall take his receipt therefor and file the same with the records of his office.

**Source:** Laws 1957, c. 365, § 23, p. 1241; Laws 1961, c. 181, § 12, p. 543.

**Cross References**

For other provisions for fees, see section 25-1280.

**81-701.05 Nebraska Railway Council agreement with railroad; oversight.**

The Department of Roads shall oversee any outstanding agreement between a railroad and the Nebraska Railway Council as of August 27, 2011, including making any outstanding payment due to a railroad.

**Source:** Laws 2011, LB259, § 2.

**81-701.06 Repealed. Laws 1995, LB 15, § 6.**

(b) NATURAL LAKES

**81-702 Transferred to section 46-801.**

**81-703 Transferred to section 46-802.**

**81-704 Transferred to section 46-803.**

**81-705 Transferred to section 46-804.**

**81-706 Transferred to section 46-805.**

**81-707 Transferred to section 46-806.**

**81-708 Transferred to section 46-807.**

(c) HIGHWAYS; SALVAGED MATERIAL

**81-709 Repealed. Laws 1955, c. 148, § 63.**

(d) STATE WAYSIDE AREAS

**81-710 State wayside areas; powers and duties of department; rules and regulations; contracts authorized.**

The Department of Roads shall establish, operate, and maintain state wayside areas. Pursuant to the Administrative Procedure Act, the department may adopt

and promulgate rules and regulations necessary to govern the use of state wayside areas and may establish fees for services, including overnight camping.

The department may contract with public or private entities for the operation and maintenance of state wayside areas.

If the department determines that an area is no longer suited or needed as a state wayside area, the department may close such area or any part thereof and declare such area or facilities as surplus. The department shall offer to convey the surplus land or facilities to all local political subdivisions in the vicinity, and if such offers are rejected, the department may sell such lands and facilities.

**Source:** Laws 1983, LB 610, § 7; Laws 2014, LB757, § 2.  
Effective date July 18, 2014.

**Cross References**

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

**81-711 State wayside areas; requirements.**

State wayside areas shall be areas appropriate in size and located at strategic intervals adjacent to main traveled highways to provide safe rest and picnic stops for travelers, which sites shall be selected for scenic or historical interest when possible, equipped with safe approach and departure lanes, and be developed in a manner and with such facilities as are appropriate to their purpose, including overnight camping.

**Source:** Laws 1983, LB 610, § 6.

**ARTICLE 8**

**INDEPENDENT BOARDS AND COMMISSIONS**

(a) GAME AND PARKS COMMISSION

Section

81-801.	Transferred to section 37-101.
81-801.01.	Transferred to section 37-102.
81-802.	Transferred to section 37-103.
81-803.	Repealed. Laws 1969, c. 776, § 2.
81-803.01.	Transferred to section 37-104.
81-804.	Transferred to section 37-105.
81-805.	Transferred to section 37-301.
81-805.01.	Repealed. Laws 1998, LB 922, § 415.
81-805.02.	Transferred to section 37-331.
81-805.03.	Transferred to section 37-328.
81-805.04.	Transferred to section 37-624.
81-805.05.	Repealed. Laws 1969, c. 793, § 1.
81-805.06.	Repealed. Laws 1969, c. 793, § 1.
81-805.07.	Repealed. Laws 1969, c. 793, § 1.
81-805.08.	Repealed. Laws 1969, c. 793, § 1.
81-805.09.	Repealed. Laws 1969, c. 793, § 1.
81-805.10.	Repealed. Laws 1969, c. 793, § 1.
81-805.11.	Repealed. Laws 1969, c. 793, § 1.
81-805.12.	Repealed. Laws 1969, c. 793, § 1.
81-805.13.	Repealed. Laws 1969, c. 793, § 1.
81-805.14.	Repealed. Laws 1969, c. 793, § 1.
81-805.15.	Repealed. Laws 1969, c. 793, § 1.
81-805.16.	Repealed. Laws 1969, c. 793, § 1.
81-805.17.	Repealed. Laws 1969, c. 793, § 1.
81-805.18.	Repealed. Laws 1969, c. 793, § 1.
81-805.19.	Repealed. Laws 1969, c. 793, § 1.

## INDEPENDENT BOARDS AND COMMISSIONS

### Section

- 81-805.20. Repealed. Laws 1969, c. 793, § 1.
- 81-805.21. Repealed. Laws 1969, c. 793, § 1.
- 81-805.22. Repealed. Laws 1969, c. 793, § 1.
- 81-805.23. Repealed. Laws 1969, c. 793, § 1.
- 81-805.24. Repealed. Laws 1969, c. 793, § 1.
- 81-805.25. Repealed. Laws 1969, c. 793, § 1.
- 81-805.26. Repealed. Laws 1969, c. 793, § 1.
- 81-805.27. Repealed. Laws 1969, c. 793, § 1.
- 81-805.28. Repealed. Laws 1969, c. 793, § 1.
- 81-805.29. Repealed. Laws 1969, c. 793, § 1.
- 81-805.30. Repealed. Laws 1969, c. 793, § 1.
- 81-806. Repealed. Laws 1981, LB 545, § 52.
- 81-807. Transferred to section 37-106.
- 81-808. Transferred to section 37-107.
- 81-809. Transferred to section 37-108.
- 81-809.01. Repealed. Laws 1972, LB 1334, § 9.
- 81-810. Transferred to section 37-109.
- 81-811. Transferred to section 37-110.
- 81-812. Transferred to section 37-346.
- 81-812.01. Repealed. Laws 1981, LB 497, § 1.
- 81-812.02. Repealed. Laws 1981, LB 497, § 1.
- 81-812.03. Repealed. Laws 1981, LB 497, § 1.
- 81-812.04. Repealed. Laws 1981, LB 497, § 1.
- 81-813. Repealed. Laws 1967, c. 585, § 13.
- 81-814. Transferred to section 37-325.
- 81-814.01. Transferred to section 37-326.
- 81-814.02. Transferred to section 37-327.
- 81-815. Transferred to section 37-349.
- 81-815.01. Repealed. Laws 1978, LB 21, § 76.
- 81-815.02. Repealed. Laws 1978, LB 21, § 76.
- 81-815.03. Repealed. Laws 1978, LB 21, § 76.
- 81-815.04. Repealed. Laws 1978, LB 21, § 76.
- 81-815.05. Repealed. Laws 1978, LB 21, § 76.
- 81-815.06. Repealed. Laws 1978, LB 21, § 76.
- 81-815.07. Repealed. Laws 1978, LB 21, § 76.
- 81-815.08. Repealed. Laws 1978, LB 21, § 76.
- 81-815.09. Repealed. Laws 1978, LB 21, § 76.
- 81-815.10. Repealed. Laws 1978, LB 21, § 76.
- 81-815.11. Repealed. Laws 1978, LB 21, § 76.
- 81-815.12. Repealed. Laws 1978, LB 21, § 76.
- 81-815.13. Repealed. Laws 1978, LB 21, § 76.
- 81-815.14. Repealed. Laws 1978, LB 21, § 76.
- 81-815.15. Repealed. Laws 1978, LB 21, § 76.
- 81-815.16. Repealed. Laws 1978, LB 21, § 76.
- 81-815.17. Repealed. Laws 1978, LB 21, § 76.
- 81-815.18. Repealed. Laws 1978, LB 21, § 76.
- 81-815.19. Repealed. Laws 1978, LB 21, § 76.
- 81-815.20. Repealed. Laws 1978, LB 21, § 76.
- 81-815.21. Transferred to section 37-337.
- 81-815.22. Transferred to section 37-338.
- 81-815.23. Transferred to section 37-339.
- 81-815.24. Transferred to section 37-340.
- 81-815.25. Transferred to section 37-341.
- 81-815.26. Transferred to section 37-329.
- 81-815.27. Transferred to section 37-342.
- 81-815.28. Transferred to section 37-343.
- 81-815.29. Transferred to section 37-344.
- 81-815.30. Transferred to section 37-345.
- 81-815.31. Transferred to section 37-347.
- 81-815.32. Transferred to section 37-336.
- 81-815.33. Transferred to section 37-348.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-815.34. Repealed. Laws 1979, LB 187, § 263.
- 81-815.35. Repealed. Laws 1982, LB 592, § 2.
- 81-815.36. Transferred to section 37-1218.01.
- 81-815.37. Repealed. Laws 1972, LB 1169, § 6.
- 81-815.38. Repealed. Laws 1972, LB 1169, § 6.
- 81-815.39. Repealed. Laws 1972, LB 1169, § 6; Laws 1972, LB 1465, § 2.
- 81-815.40. Transferred to section 90-212.
- 81-815.41. Repealed. Laws 1987, LB 32, § 3.
- 81-815.42. Repealed. Laws 1987, LB 32, § 3.
- 81-815.43. Repealed. Laws 1987, LB 32, § 3.
- 81-815.44. Repealed. Laws 1987, LB 32, § 3.
- 81-815.45. Transferred to section 81-1211.
- 81-815.46. Transferred to section 90-213.
- 81-815.47. Transferred to section 90-214.
- 81-815.48. Transferred to section 90-215.
- 81-815.49. Transferred to section 90-216.
- 81-815.50. Transferred to section 37-908.
- 81-815.51. Transferred to section 37-909.
- 81-815.52. Repealed. Laws 1998, LB 922, § 415.
- 81-815.53. Transferred to section 37-907.
- 81-815.54. Repealed. Laws 1995, LB 15, § 6.
- 81-815.55. Transferred to section 37-910.
- 81-815.56. Transferred to section 37-911.
- 81-815.57. Repealed. Laws 1996, LB 296, § 4.
- 81-815.58. Transferred to section 37-1010.
- 81-815.59. Transferred to section 37-912.
- 81-815.60. Transferred to section 37-1011.
- 81-815.61. Transferred to section 37-1012.
- 81-815.62. Transferred to section 37-1013.
- 81-815.63. Transferred to section 37-1014.
- 81-815.64. Transferred to section 37-1015.
- 81-815.65. Transferred to section 37-914.

### (b) COUNCIL OF STATE GOVERNMENTS

- 81-816. Repealed. Laws 2011, LB 326, § 1.
- 81-817. Repealed. Laws 2011, LB 326, § 1.
- 81-818. Repealed. Laws 2000, LB 1135, § 34.
- 81-819. Repealed. Laws 2011, LB 326, § 1.
- 81-820. Repealed. Laws 2000, LB 1135, § 34.
- 81-821. Repealed. Laws 2000, LB 1135, § 34.
- 81-822. Repealed. Laws 2000, LB 1135, § 34.
- 81-823. Repealed. Laws 2000, LB 1135, § 34.
- 81-824. Council of State Governments declared a joint governmental agency.

### (c) EMERGENCY MANAGEMENT

- 81-825. Wildfire Control Act of 2013; act, how cited.
- 81-826. Wildfire Control Act of 2013; legislative findings.
- 81-827. Wildfire control; Nebraska Emergency Management Agency; duties; legislative intent; report; contents.
- 81-828. Wildfire control; Nebraska Forest Service; duties.
- 81-829. Repealed. Laws 1947, c. 179, § 9.
- 81-829.01. Expired. Laws 1943, c. 191, § 1.
- 81-829.02. Expired. Laws 1943, c. 191, § 2.
- 81-829.03. Repealed. Laws 1953, c. 336, § 5.
- 81-829.04. Repealed. Laws 1951, c. 315, § 16.
- 81-829.05. Transferred to section 81-829.36.
- 81-829.06. Transferred to section 81-829.37.
- 81-829.07. Transferred to section 81-829.38.
- 81-829.08. Transferred to section 81-829.39.
- 81-829.09. Transferred to section 81-829.40.
- 81-829.10. Repealed. Laws 1973, LB 494, § 34.

## INDEPENDENT BOARDS AND COMMISSIONS

### Section

- 81-829.11. Repealed. Laws 1973, LB 494, § 34.
- 81-829.12. Repealed. Laws 1973, LB 494, § 34.
- 81-829.13. Transferred to section 81-829.52.
- 81-829.14. Transferred to section 81-829.53.
- 81-829.15. Transferred to section 81-829.54.
- 81-829.16. Repealed. Laws 1953, c. 336, § 5.
- 81-829.17. Repealed. Laws 1953, c. 336, § 5.
- 81-829.18. Transferred to section 81-829.46.
- 81-829.19. Transferred to section 81-829.48.
- 81-829.20. Repealed. Laws 1973, LB 494, § 34.
- 81-829.21. Transferred to section 81-829.55.
- 81-829.22. Transferred to section 81-829.49.
- 81-829.23. Transferred to section 81-829.51.
- 81-829.24. Transferred to section 81-829.58.
- 81-829.25. Transferred to section 81-829.59.
- 81-829.26. Transferred to section 81-829.60.
- 81-829.27. Transferred to section 81-829.61.
- 81-829.28. Transferred to section 81-829.62.
- 81-829.29. Transferred to section 81-829.63.
- 81-829.30. Transferred to section 81-829.64.
- 81-829.31. Adjutant General; Emergency Management Act; administer.
- 81-829.32. Transferred to section 81-829.65.
- 81-829.33. Governor's Emergency Cash Fund; created; use; investment.
- 81-829.34. Repealed. Laws 1971, LB 105, § 1.
- 81-829.35. Transferred to section 81-829.66.
- 81-829.36. Act, how cited.
- 81-829.37. Purposes of act.
- 81-829.38. Act, how construed.
- 81-829.39. Terms, defined.
- 81-829.40. Governor; powers and duties.
- 81-829.41. Agency; Adjutant General; powers and duties.
- 81-829.42. Governor's Emergency Program; established.
- 81-829.43. Prevention measures; procedure.
- 81-829.44. Repealed. Laws 1996, LB 43, § 54.
- 81-829.45. Agency; weather conditions; continuously apprise.
- 81-829.46. Local government; Governor; powers; duties; performance of functions.
- 81-829.47. Interjurisdictional emergency management arrangement; Governor findings.
- 81-829.48. Emergency management aid and assistance; mutual aid arrangements; interjurisdictional emergency management agreement.
- 81-829.49. Local government appropriations.
- 81-829.50. Local emergency; declared; principal executive officer of a local government; effect; interjurisdictional emergency management organization.
- 81-829.51. Local government; emergency expenditures; vote of governing body; when.
- 81-829.52. State emergency response teams; establish; team leader; appointment; duties.
- 81-829.53. State emergency response teams; personnel; powers; duties; rights; immunities; compensation.
- 81-829.54. State emergency response teams; employees; expenses; political subdivisions; reimbursement by state; rental of equipment; payment; damages.
- 81-829.55. Immunity from liability for activities; covered by Nebraska Workers' Compensation Act; licenses, not required; emergency management worker; powers, duties, immunities, privileges.
- 81-829.56. Interstate Civil Defense and Disaster Compact; enactment; other agreements or compacts; approval.
- 81-829.57. Persons within the state; conduct; personal services; compensation for property; claim; file.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-829.58. Emergency management; supplies and services from federal government; funds; disposition.
- 81-829.59. Emergency management; supplies and services from private entities; funds; disposition.
- 81-829.60. Emergency management; utilization of services, equipment, supplies, and facilities of existing departments and agencies of state.
- 81-829.61. Emergency management organizations; political activities prohibited.
- 81-829.62. Emergency management; personnel; advocacy of subversive activities against government; prohibited.
- 81-829.63. Repealed. Laws 1996, LB 43, § 54.
- 81-829.64. Emergency management organizations; enforce orders, rules, and regulations.
- 81-829.65. Emergency operations; moving of equipment outside limits of local government; law enforcement personnel; powers; insurance.
- 81-829.66. Emergency operations; immunity from liability for licensors of shelter space.
- 81-829.67. Storm spotter or emergency management worker; training, identification, and credentialing.
- 81-829.68. Repealed. Laws 1976, LB 847, § 2.
- 81-829.69. State of emergency; proclaimed by Governor; powers.
- 81-829.70. Temporary housing units; powers of local governments.
- 81-829.71. Major disaster; powers of Governor; apply for federal community disaster loans; cancellation of repayment; when.
- 81-829.72. State of emergency; powers of Governor; Adjutant General; duty.
- 81-829.73. Misstatement concerning financial assistance; penalty.
- 81-829.74. Repealed. Laws 1996, LB 43, § 54.
- 81-829.75. References to prior act and agency; how construed.

### (d) OFFICE OF HOMELAND SECURITY

- 81-830. Office of Homeland Security; created; Director of State Homeland Security; Homeland Security Policy Group; created; members; duties.
- 81-831. Repealed. Laws 1957, c. 381, § 4.
- 81-832. Repealed. Laws 1957, c. 381, § 4.
- 81-833. Repealed. Laws 1945, c. 233, § 18.
- 81-834. Repealed. Laws 1957, c. 381, § 4.
- 81-835. Repealed. Laws 1957, c. 381, § 4.
- 81-836. Repealed. Laws 1957, c. 381, § 4.
- 81-837. Repealed. Laws 1957, c. 381, § 4.
- 81-838. Repealed. Laws 1957, c. 381, § 4.

### (e) BOARD OF EXAMINERS FOR PROFESSIONAL ENGINEERS AND ARCHITECTS

- 81-839. Repealed. Laws 1997, LB 622, § 137.
- 81-840. Repealed. Laws 1997, LB 622, § 137.
- 81-841. Repealed. Laws 1997, LB 622, § 137.
- 81-842. Repealed. Laws 1997, LB 622, § 137.
- 81-843. Repealed. Laws 1997, LB 622, § 137.
- 81-844. Repealed. Laws 1997, LB 622, § 137.
- 81-845. Repealed. Laws 1997, LB 622, § 137.
- 81-846. Repealed. Laws 1997, LB 622, § 137.
- 81-846.01. Repealed. Laws 1997, LB 622, § 137.
- 81-847. Repealed. Laws 1997, LB 622, § 137.
- 81-848. Repealed. Laws 1997, LB 622, § 137.
- 81-849. Repealed. Laws 1997, LB 622, § 137.
- 81-850. Repealed. Laws 1997, LB 622, § 137.
- 81-851. Repealed. Laws 1997, LB 622, § 137.
- 81-852. Repealed. Laws 1997, LB 622, § 137.
- 81-853. Repealed. Laws 1997, LB 622, § 137.
- 81-854. Repealed. Laws 1997, LB 622, § 137.
- 81-855. Repealed. Laws 1997, LB 622, § 137.
- 81-856. Repealed. Laws 1997, LB 622, § 137.

## INDEPENDENT BOARDS AND COMMISSIONS

### Section

#### (f) SUNDRY CLAIMS BOARD

- 81-857. Transferred to section 81-8,220.
- 81-858. Transferred to section 81-8,236.
- 81-859. Transferred to section 81-8,237.
- 81-860. Transferred to section 81-8,238.
- 81-861. Transferred to section 81-8,239.

#### (g) REAL ESTATE COMMISSION

- 81-862. Repealed. Laws 1973, LB 68, § 49.
- 81-863. Repealed. Laws 1973, LB 68, § 49.
- 81-864. Repealed. Laws 1973, LB 68, § 49.
- 81-865. Repealed. Laws 1973, LB 68, § 49.
- 81-866. Repealed. Laws 1973, LB 68, § 49.
- 81-867. Repealed. Laws 1973, LB 68, § 49.
- 81-868. Repealed. Laws 1973, LB 68, § 49.
- 81-869. Repealed. Laws 1973, LB 68, § 49.
- 81-870. Repealed. Laws 1973, LB 68, § 49.
- 81-871. Repealed. Laws 1973, LB 68, § 49.
- 81-872. Repealed. Laws 1973, LB 68, § 49.
- 81-873. Repealed. Laws 1973, LB 68, § 49.
- 81-874. Repealed. Laws 1973, LB 68, § 49.
- 81-875. Repealed. Laws 1973, LB 68, § 49.
- 81-875.01. Repealed. Laws 1973, LB 68, § 49.
- 81-875.02. Repealed. Laws 1973, LB 68, § 49.
- 81-875.03. Repealed. Laws 1973, LB 68, § 49.
- 81-876. Repealed. Laws 1973, LB 68, § 49.
- 81-877. Repealed. Laws 1973, LB 68, § 49.
- 81-877.01. Repealed. Laws 1973, LB 68, § 49.
- 81-878. Repealed. Laws 1973, LB 68, § 49.
- 81-879. Repealed. Laws 1973, LB 68, § 49.
- 81-880. Repealed. Laws 1973, LB 68, § 49.
- 81-881. Repealed. Laws 1973, LB 68, § 49.
- 81-882. Repealed. Laws 1973, LB 68, § 49.
- 81-883. Repealed. Laws 1973, LB 68, § 49.
- 81-884. Repealed. Laws 1973, LB 68, § 49.
- 81-884.01. Repealed. Laws 1973, LB 68, § 49.
- 81-884.02. Repealed. Laws 1973, LB 68, § 49.
- 81-884.03. Repealed. Laws 1959, c. 439, § 7.
- 81-885. Act, how cited.
- 81-885.01. Terms, defined.
- 81-885.02. Broker, associate broker, real estate salesperson; license required; exemption.
- 81-885.03. Broker, associate broker, salesperson, defined; license required; cease and desist order; violation; fine; procedure.
- 81-885.04. Act; exceptions.
- 81-885.05. Railroads; public utilities; applicability of act.
- 81-885.06. Action for recovery of compensation; prohibited, except to licensed brokers, associate brokers, or salespersons.
- 81-885.07. State Real Estate Commission; created; members; appointment; qualifications; compensation; director; rules and regulations; conduct real estate institutes and seminars; fees.
- 81-885.08. Seal; adopt; use.
- 81-885.09. Attorney General; opinions on questions of law; act as attorney; fees and expenses; paid from State Real Estate Commission's Fund.
- 81-885.10. Commission; powers; licensing; sanctions; consent decrees; civil fine.
- 81-885.11. Broker or salesperson; application for license; contents; expiration.
- 81-885.12. License; when granted.
- 81-885.13. License; conditions for issuance; enumerated; examination; fingerprinting; criminal history record information check; courses of study.
- 81-885.14. Fees; license; renewal; procedure.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-885.15. Fees; deposited in State Real Estate Commission's Fund; investment.
- 81-885.16. Real Property Appraiser Act; applicability; broker's price opinion or comparative market analysis; requirements.
- 81-885.17. Nonresident broker's license; nonresident salesperson's license; issuance; requirements; fingerprinting; criminal history record information check; reciprocal agreements.
- 81-885.18. Application; refusal; hearing; decision.
- 81-885.19. License; form; broker's branch office; license; fee.
- 81-885.20. Broker, salesperson; change in place of business or status; notify commission; fee.
- 81-885.21. Broker; separate trust account; notify commission where maintained; examination by representative of commission; broker entitled to money; when.
- 81-885.22. Broker, failure to comply with separate bank accounts and trust account provisions; report to Attorney General; action by Attorney General; receiver.
- 81-885.23. Attorney General; special counsel; appoint; fees allowed; taxed as costs.
- 81-885.24. Commission; investigative powers; disciplinary powers; civil fine; violations of unfair trade practices.
- 81-885.25. Censure, revoke, or suspend license; impose civil fine; cease and desist order; hearing; notice; contents.
- 81-885.26. Answer to complaint; when.
- 81-885.27. Hearing; witnesses; subpoenas; depositions.
- 81-885.28. Refusal of witness to attend or testify; proceedings in district court.
- 81-885.29. Findings and determination by commission; license revoked or suspended; when; censure; civil fine; stay of execution; probation.
- 81-885.30. Appeal; procedure.
- 81-885.31. Civil fines; distribution; collection procedure.
- 81-885.32. Repealed. Laws 1978, LB 361, § 14.
- 81-885.33. Subdivision real estate; sale or offer to sell; requirements.
- 81-885.34. Subdivision real estate; sale; subdivision certificate; application; contents; fee.
- 81-885.35. Subdivision real estate; investigation; expenses; certificate; conditions.
- 81-885.36. Subdivision real estate; application for certificate; approval; fee; renewal.
- 81-885.37. Subdivision real estate; instrument conveying an interest; recordable form; recording.
- 81-885.38. Subdivision real estate; representations that commission has inspected and approved; unlawful.
- 81-885.39. Subdivision real estate; cease and desist orders.
- 81-885.40. Subdivision real estate; failure to comply with sections; contract void; repayment of money with interest.
- 81-885.41. Subdivision real estate; industrial or commercial properties.
- 81-885.42. Subdivision real estate; sales of twenty-five or more lots.
- 81-885.43. Violations; Attorney General; maintain action.
- 81-885.44. Complaint for violations of act.
- 81-885.45. Acting without license or certificate; penalty.
- 81-885.46. License or certificate under prior law; renewal.
- 81-885.47. Repealed. Laws 2009, LB 30, § 17.
- 81-885.48. Terms, how construed.
- 81-885.49. Continuing education and training; purpose.
- 81-885.50. Continuing education and training; terms, defined.
- 81-885.51. Continuing education and training; evidence of completion.
- 81-885.52. Continuing education and training; certify activities.
- 81-885.53. Continuing education and training; licensee; requirements.
- 81-885.54. Continuing education and training; rules and regulations.
- 81-885.55. Errors and omissions insurance; commission; duties; certificate of coverage; required; when; group plan unavailable at a reasonable premium; effect.
- 81-886. Repealed. Laws 1973, LB 68, § 49.
- 81-886.01. Repealed. Laws 1973, LB 68, § 49.
- 81-886.02. Repealed. Laws 1973, LB 68, § 49.

## INDEPENDENT BOARDS AND COMMISSIONS

### Section

- 81-886.03. Repealed. Laws 1973, LB 68, § 49.
- 81-886.04. Repealed. Laws 1973, LB 68, § 49.
- 81-886.05. Repealed. Laws 1973, LB 68, § 49.
- 81-886.06. Repealed. Laws 1973, LB 68, § 49.
- 81-886.07. Repealed. Laws 1973, LB 68, § 49.
- 81-887. Repealed. Laws 1973, LB 68, § 49.
- 81-887.01. Auctioneers; nonresident; reciprocity.
- 81-887.02. Auctioneers; nonresident; license; application; county clerk; fee; disposition.
- 81-887.03. Auctioneers; nonresident; additional requirements.

### (h) NEBRASKA MERIT SYSTEM

- 81-888. Repealed. Laws 1951, c. 311, § 11.
- 81-889. Repealed. Laws 1951, c. 311, § 11.
- 81-890. Repealed. Laws 1951, c. 311, § 11.
- 81-891. Repealed. Laws 1951, c. 311, § 11.
- 81-892. Repealed. Laws 1951, c. 311, § 11.
- 81-893. Repealed. Laws 1951, c. 311, § 11.
- 81-894. Repealed. Laws 1951, c. 311, § 11.
- 81-895. Repealed. Laws 1951, c. 311, § 11.
- 81-896. Repealed. Laws 1951, c. 311, § 11.
- 81-897. Repealed. Laws 1951, c. 311, § 11.
- 81-898. Repealed. Laws 1951, c. 311, § 11.
- 81-899. Repealed. Laws 1951, c. 311, § 11.
- 81-8,100. Repealed. Laws 1951, c. 311, § 11.
- 81-8,101. Repealed. Laws 1951, c. 311, § 11.
- 81-8,102. Repealed. Laws 1951, c. 311, § 11.
- 81-8,103. Repealed. Laws 1951, c. 311, § 11.
- 81-8,104. Repealed. Laws 1951, c. 311, § 11.
- 81-8,105. Repealed. Laws 1951, c. 311, § 11.
- 81-8,106. Repealed. Laws 1997, LB 5, § 5.
- 81-8,107. Repealed. Laws 1997, LB 5, § 5.

### (i) LAND SURVEYING

- 81-8,108. Land surveying; declaration of policy; prohibited acts.
- 81-8,109. Land surveying; definitions.
- 81-8,110. Land surveying; board of examiners; duties.
- 81-8,110.01. Examining board; members; terms; qualifications; removal; vacancies.
- 81-8,110.02. Examining board; members; residence; qualifications.
- 81-8,110.03. State Surveyor; ex officio secretary of examining board.
- 81-8,110.04. Examining board; meetings.
- 81-8,110.05. Examining board; meetings; notice.
- 81-8,110.06. Examining board; officers; election; duties.
- 81-8,110.07. Examining board; secretary; duties; Land Surveyor Examiner's Fund; created; purpose; investment.
- 81-8,110.08. Examining board; rules and regulations; publication.
- 81-8,110.09. Repealed. Laws 1994, LB 874, § 25.
- 81-8,110.10. Repealed. Laws 1994, LB 874, § 25.
- 81-8,110.11. Examining board; members; expenses.
- 81-8,110.12. Examining board; seal; adopt.
- 81-8,110.13. Examining board; registration certificate; issuance; replacement certificate, when; fee.
- 81-8,110.14. Examining board; record of proceedings and applications for registration; confidential.
- 81-8,110.15. Examining board; sue and be sued; liability of members.
- 81-8,111. Repealed. Laws 1971, LB 442, § 24.
- 81-8,112. Repealed. Laws 1971, LB 442, § 24.
- 81-8,113. Examining board; record of proceedings; roster of surveyors.
- 81-8,114. Land surveying; application for registration.
- 81-8,115. Land surveying; examination of applicants.
- 81-8,116. Repealed. Laws 1994, LB 874, § 25.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-8,117. Land surveying; eligibility for registration; requirements.
- 81-8,118. Land surveying; application and registration fees; examination fee; failure to pay fees, effect.
- 81-8,119. Repealed. Laws 1971, LB 442, § 24.
- 81-8,119.01. Certificate of registration; renewal; professional development requirements; inactive status.
- 81-8,119.02. Professional development programs; rules and regulations.
- 81-8,120. Land surveying; nonresident; registration; fee; service of process.
- 81-8,121. Land surveying; registered land surveyor; rights and privileges; seal.
- 81-8,122. Land survey; where filed.
- 81-8,122.01. Land survey; filing; contents.
- 81-8,122.02. Land survey; failure to file record; effect.
- 81-8,123. Land surveyor; complaint; probation, suspension, or revocation of registration; grounds.
- 81-8,124. Land surveyor; suspension or revocation of registration; hearing; notice.
- 81-8,125. Land surveyor; suspension or revocation of registration; hearing; attendance of witnesses; record; findings; order; effect.
- 81-8,126. Land surveying; applicability of law.
- 81-8,127. Land surveying; unlawful practice or use of title; penalty.

### (j) STATE ATHLETIC COMMISSIONER

- 81-8,128. State Athletic Commissioner; appointment; term; salary; bond or insurance; assistants.
- 81-8,128.01. State Athletic Commissioner; salary increase; when effective.
- 81-8,129. State Athletic Commissioner; jurisdiction; activities covered.
- 81-8,129.01. State Athletic Commissioner's Cash Fund; created; receipts; disbursements.
- 81-8,130. Amateur mixed martial arts matches or exhibitions; license; fee.
- 81-8,130.01. Professional matches; promoters; licenses and permits; fee.
- 81-8,131. Mixed martial arts, defined.
- 81-8,132. Licensee; bond; conditions.
- 81-8,133. Referees; license; duties; fee.
- 81-8,133.01. Other officials and contestants; license required; fees; revocation of license.
- 81-8,134. Boxing, mixed martial arts, or sparring matches; rules governing.
- 81-8,135. Licensee; reports; contents; gross receipts tax; amounts.
- 81-8,136. Tickets; sale; commissioner may supervise.
- 81-8,137. License; revocation or suspension; grounds.
- 81-8,138. Contestants; compensation; when payable; fake contests.
- 81-8,139. State Athletic Commissioner; rules and regulations; powers.
- 81-8,139.01. Repealed. Laws 2013, LB 78, § 23.
- 81-8,140. Repealed. Laws 1981, LB 545, § 52.
- 81-8,141. Licensee; reports; failure to make; investigation; determination of tax; failure to pay; effect.
- 81-8,142. Violations; penalty.
- 81-8,142.01. Violations; Attorney General; duties.

### (k) CENTENNIAL COMMISSION

- 81-8,143. Repealed. Laws 1969, c. 411, § 1.
- 81-8,144. Repealed. Laws 1969, c. 411, § 1.
- 81-8,145. Repealed. Laws 1969, c. 411, § 1.
- 81-8,145.01. Repealed. Laws 1969, c. 411, § 1.
- 81-8,145.02. Repealed. Laws 1969, c. 411, § 1.
- 81-8,145.03. Repealed. Laws 1969, c. 411, § 1.

### (l) NEBRASKA SONG COMMITTEE

- 81-8,146. Repealed. Laws 1969, c. 411, § 1.
- 81-8,147. Repealed. Laws 1969, c. 411, § 1.
- 81-8,148. Repealed. Laws 1969, c. 411, § 1.

### (m) NEBRASKA INDUSTRIAL RESEARCH INSTITUTE

- 81-8,149. Repealed. Laws 1967, c. 566, § 15.

## INDEPENDENT BOARDS AND COMMISSIONS

### Section

- 81-8,150. Repealed. Laws 1967, c. 566, § 15.
- 81-8,151. Repealed. Laws 1967, c. 566, § 15.
- 81-8,152. Repealed. Laws 1967, c. 566, § 15.
- 81-8,153. Repealed. Laws 1967, c. 566, § 15.
- 81-8,154. Repealed. Laws 1967, c. 566, § 15.
- 81-8,155. Repealed. Laws 1967, c. 566, § 15.
- 81-8,156. Repealed. Laws 1967, c. 566, § 15.
- 81-8,157. Repealed. Laws 1967, c. 566, § 15.

### (n) COLLECTION AGENCY

- 81-8,158. Transferred to section 45-601.
- 81-8,159. Transferred to section 45-602.
- 81-8,160. Repealed. Laws 1984, LB 471, § 24.
- 81-8,161. Repealed. Laws 1984, LB 471, § 24.
- 81-8,162. Transferred to section 45-603.
- 81-8,163. Repealed. Laws 1984, LB 471, § 24.
- 81-8,164. Repealed. Laws 1984, LB 471, § 24.
- 81-8,165. Transferred to section 45-604.
- 81-8,166. Transferred to section 45-605.
- 81-8,167. Transferred to section 45-606.
- 81-8,168. Transferred to section 45-607.
- 81-8,169. Transferred to section 45-608.
- 81-8,170. Transferred to section 45-609.
- 81-8,171. Transferred to section 45-610.
- 81-8,172. Transferred to section 45-611.
- 81-8,173. Transferred to section 45-612.
- 81-8,174. Transferred to section 45-613.
- 81-8,175. Transferred to section 45-614.
- 81-8,176. Transferred to section 45-615.
- 81-8,177. Transferred to section 45-616.
- 81-8,178. Transferred to section 45-617.
- 81-8,179. Transferred to section 45-618.
- 81-8,180. Transferred to section 45-619.
- 81-8,181. Transferred to section 45-620.
- 81-8,182. Transferred to section 45-621.
- 81-8,183. Transferred to section 45-622.

### (o) PROFESSIONAL LANDSCAPE ARCHITECTS

- 81-8,183.01. Act, how cited.
- 81-8,184. Terms, defined.
- 81-8,184.01. Act; intent.
- 81-8,185. License required; display of certificate of licensure; current certificate holder; how treated.
- 81-8,186. State Board of Landscape Architects; members; appointment.
- 81-8,187. Board; members; term.
- 81-8,188. Board; members; vacancies.
- 81-8,189. Board; members; compensation; expenses.
- 81-8,190. Board; chairperson; meetings; quorum; personnel; employ.
- 81-8,191. Board; powers; Attorney General provide counsel.
- 81-8,191.01. Board; powers; rules and regulations; conflict of interest.
- 81-8,192. Board; certificates of licensure; list; filing.
- 81-8,193. Board; seal; adopt.
- 81-8,194. Board; fees; disposition; State Board of Landscape Architects Cash Fund; created; investment.
- 81-8,195. Applications for licensure; statements; fee.
- 81-8,196. Applicant for licensure; requirements.
- 81-8,197. Applicants; examination.
- 81-8,198. Licensee; seal; use; effect.
- 81-8,199. Certificate of licensure; annual fee, payment; issuance.
- 81-8,200. Certificate of licensure; fee; expiration; notice.
- 81-8,200.01. Certificate of licensure; renewal; professional development requirements.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-8,200.02. Professional development programs; rules and regulations.  
81-8,201. License without examination; when; fee.  
81-8,202. License; probation, revocation, or suspension; appeal.  
81-8,203. Warrants for payment of expenses and compensation; issuance.  
81-8,204. Certificate of licensure; required; violation; injunction.  
81-8,205. Injunction; prohibited acts; violation; penalty.  
81-8,206. Persons exempt from act.  
81-8,207. Repealed. Laws 1971, LB 98, § 8.  
81-8,208. Transferred to section 81-8,183.01.
- (p) TORT CLAIMS, STATE CLAIMS BOARD, AND RISK MANAGEMENT PROGRAM
- 81-8,209. State Tort Claims Act; purpose.  
81-8,210. Terms, defined.  
81-8,211. Risk Manager; State Claims Board; authority; procedure; fees.  
81-8,212. Tort claims; filing; Risk Manager; Attorney General; duty; service of process.  
81-8,213. Suit; final disposition by Risk Manager or State Claims Board required; exception.  
81-8,214. District court; jurisdiction; venue.  
81-8,215. Liability of state.  
81-8,215.01. Vehicular pursuit by law enforcement officer; liability to third parties; reimbursement.  
81-8,216. Rules of civil procedure; costs; judgment; appeal.  
81-8,217. Judgment; effect.  
81-8,218. Attorney General; authority.  
81-8,219. State Tort Claims Act; claims exempt.  
81-8,220. State Claims Board; members; legal advisor; hire secretary; expenses.  
81-8,221. State Claims Board; rules and regulations; adopt.  
81-8,222. Department of Justice; Claims Division; assistant attorney general; duties.  
81-8,223. Award; acceptance; effect.  
81-8,224. Award; certification; payment; review, when.  
81-8,225. Tort Claims Fund; established; amount; investment; appropriation.  
81-8,226. Report to Clerk of the Legislature; contents.  
81-8,227. Tort claim; limitation of action.  
81-8,228. Attorney's fees; expenses; allowance.  
81-8,229. Tort claims; remedy of State Tort Claims Act; exclusive.  
81-8,230. State agency; payment of claims; construction of act.  
81-8,231. Claim under act; insurance coverage; effect.  
81-8,232. Action against employee; act or omission of employee.  
81-8,233. Employee; report property damage, injury, or death; cooperation in investigation.  
81-8,234. Skatepark and bicycle motocross park; sign required; warning notice.  
81-8,235. Act, how cited.  
81-8,236. Repealed. Laws 1988, LB 864, § 72.  
81-8,237. Transferred to section 81-8,298.  
81-8,238. Transferred to section 81-8,299.  
81-8,239. Transferred to section 81-8,300.  
81-8,239.01. Risk Management Program; risk management and state claims division of the Department of Administrative Services; established; Risk Manager; powers and duties.  
81-8,239.02. State Insurance Fund; State Self-Insured Property Fund; State Self-Insured Indemnification Fund; State Self-Insured Liability Fund; created; purposes; report.  
81-8,239.03. Risk Manager; present budget request; contents; deficiency appropriation; procedure; investment.  
81-8,239.04. Money or property recovered by state; disposition.  
81-8,239.05. Indemnification of state officials and employees; when; Attorney General; duties; report.  
81-8,239.06. Civil action against state officer or employee; Attorney General; represent; cooperation required; payment for defense; when required.

## INDEPENDENT BOARDS AND COMMISSIONS

### Section

- 81-8,239.07. Risk Manager; self-insure; risk management services; procure insurance; amount of protection; premium; payments.
- 81-8,239.08. Civil action against provider of medical or dental services; Attorney General; represent; indemnification of provider.
- 81-8,239.09. Risk Management Administration Cash Fund; created; use; investment.
- 81-8,239.10. Repealed. Laws 2001, LB 3, § 4.
- 81-8,239.11. Settlements and judgments; state agency; Attorney General; filing required; insufficient funds; Risk Manager; duties.

### (q) PUBLIC COUNSEL

- 81-8,240. Terms, defined.
- 81-8,241. Public Counsel; established; powers and duties; appointment.
- 81-8,242. Public Counsel; qualifications.
- 81-8,243. Public Counsel; term; removal; vacancy; salary.
- 81-8,244. Public Counsel; personnel; appointment; compensation; authority; appoint Inspector General of Nebraska Child Welfare.
- 81-8,245. Public Counsel; powers; enumerated.
- 81-8,246. Public Counsel; particular administrative acts addressed.
- 81-8,247. Public Counsel; complaint; investigation; decision; notify complainant.
- 81-8,248. Public Counsel; complaint; conclusion or recommendation; consult with agency or person.
- 81-8,249. Public Counsel; agency; information; recommendations.
- 81-8,250. Public Counsel; conclusions; publish; inclusions.
- 81-8,251. Public Counsel; report to Clerk of the Legislature; time; contents.
- 81-8,252. Public Counsel; public officer or employee; acted to warrant criminal proceedings; refer to proper authorities.
- 81-8,253. Public Counsel; proceedings, opinion, expression; not reviewable by court; not subject to testify or produce evidence.
- 81-8,254. Violations; penalty; state employee; complaint; effect.

### (r) COMMISSION ON THE STATUS OF WOMEN

- 81-8,255. Repealed. Laws 2009, LB 154, § 27.
- 81-8,256. Repealed. Laws 2009, LB 154, § 27.
- 81-8,257. Repealed. Laws 2009, LB 154, § 27.
- 81-8,258. Repealed. Laws 2009, LB 154, § 27.
- 81-8,259. Repealed. Laws 2009, LB 154, § 27.
- 81-8,260. Repealed. Laws 2009, LB 154, § 27.
- 81-8,260.01. Repealed. Laws 2009, LB 154, § 27.
- 81-8,260.02. Repealed. Laws 2009, LB 154, § 27.
- 81-8,261. Repealed. Laws 1981, LB 545, § 52.

### (s) COMMISSION ON LATINO-AMERICANS

- 81-8,262. Commission on Latino-Americans; created; term, defined.
- 81-8,263. Commission; members; appointment; term.
- 81-8,264. Commission; officers.
- 81-8,265. Commission; functions.
- 81-8,266. Commission; meetings; quorum.
- 81-8,267. Commission; members; compensation.
- 81-8,268. Commission; director; qualifications; employ.
- 81-8,269. Director; duties.
- 81-8,270. Director; employ personnel.
- 81-8,271. Commission; powers.
- 81-8,271.01. Commission on Latino-Americans Cash Fund; created; use; investment.

### (t) NEBRASKA AMERICAN REVOLUTION BICENTENNIAL COMMISSION

- 81-8,272. Repealed. Laws 1985, LB 8, § 1.
- 81-8,273. Repealed. Laws 1985, LB 8, § 1.
- 81-8,274. Repealed. Laws 1985, LB 8, § 1.
- 81-8,275. Repealed. Laws 1985, LB 8, § 1.

### (u) REAL ESTATE APPRAISERS

- 81-8,276. Repealed. Laws 1990, LB 1153, § 67.

## Section

- 81-8,277. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,278. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,279. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,280. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,281. Repealed. Laws 1978, LB 659, § 5.
- 81-8,282. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,283. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,284. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,285. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,286. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,287. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,288. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,289. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,290. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,291. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,292. Repealed. Laws 1990, LB 1153, § 67.
- 81-8,293. Repealed. Laws 1990, LB 1153, § 67.

## (v) STATE MISCELLANEOUS CLAIMS ACT

- 81-8,294. Act, how cited.
- 81-8,295. Miscellaneous claim, defined.
- 81-8,296. State Claims Board; miscellaneous claims; powers.
- 81-8,297. State Claims Board; general powers.
- 81-8,298. State Claims Board; meetings; hearings; notice.
- 81-8,299. State Claims Board; powers; duties.
- 81-8,300. Risk Manager; State Claims Board; claims; filing; investigation; duties; review by Legislature; payment.
- 81-8,300.01. Statute of limitation.
- 81-8,301. Acceptance of award; effect.

## (w) STATE CONTRACT CLAIMS ACT

- 81-8,302. Act, how cited.
- 81-8,303. Terms, defined.
- 81-8,304. Contract claims; filing procedure.
- 81-8,305. State Claims Board; submission of claim; procedure; action in district court; when.
- 81-8,306. Claims; when barred; exclusive remedy.

## (x) NEBRASKA LEWIS AND CLARK BICENTENNIAL COMMISSION

- 81-8,307. Repealed. Laws 2009, LB 154, § 27.
- 81-8,308. Repealed. Laws 2009, LB 154, § 27.

## (y) NEBRASKA SESQUICENTENNIAL COMMISSION

- 81-8,309. Nebraska Sesquicentennial Commission; members; vacancy; termination.
- 81-8,310. Nebraska Sesquicentennial Commission; duties; powers.

## (a) GAME AND PARKS COMMISSION

**81-801 Transferred to section 37-101.**

**81-801.01 Transferred to section 37-102.**

**81-802 Transferred to section 37-103.**

**81-803 Repealed. Laws 1969, c. 776, § 2.**

**81-803.01 Transferred to section 37-104.**

**81-804 Transferred to section 37-105.**

**81-805 Transferred to section 37-301.**

- 81-805.01 Repealed. Laws 1998, LB 922, § 415.
- 81-805.02 Transferred to section 37-331.
- 81-805.03 Transferred to section 37-328.
- 81-805.04 Transferred to section 37-624.
- 81-805.05 Repealed. Laws 1969, c. 793, § 1.
- 81-805.06 Repealed. Laws 1969, c. 793, § 1.
- 81-805.07 Repealed. Laws 1969, c. 793, § 1.
- 81-805.08 Repealed. Laws 1969, c. 793, § 1.
- 81-805.09 Repealed. Laws 1969, c. 793, § 1.
- 81-805.10 Repealed. Laws 1969, c. 793, § 1.
- 81-805.11 Repealed. Laws 1969, c. 793, § 1.
- 81-805.12 Repealed. Laws 1969, c. 793, § 1.
- 81-805.13 Repealed. Laws 1969, c. 793, § 1.
- 81-805.14 Repealed. Laws 1969, c. 793, § 1.
- 81-805.15 Repealed. Laws 1969, c. 793, § 1.
- 81-805.16 Repealed. Laws 1969, c. 793, § 1.
- 81-805.17 Repealed. Laws 1969, c. 793, § 1.
- 81-805.18 Repealed. Laws 1969, c. 793, § 1.
- 81-805.19 Repealed. Laws 1969, c. 793, § 1.
- 81-805.20 Repealed. Laws 1969, c. 793, § 1.
- 81-805.21 Repealed. Laws 1969, c. 793, § 1.
- 81-805.22 Repealed. Laws 1969, c. 793, § 1.
- 81-805.23 Repealed. Laws 1969, c. 793, § 1.
- 81-805.24 Repealed. Laws 1969, c. 793, § 1.
- 81-805.25 Repealed. Laws 1969, c. 793, § 1.
- 81-805.26 Repealed. Laws 1969, c. 793, § 1.
- 81-805.27 Repealed. Laws 1969, c. 793, § 1.
- 81-805.28 Repealed. Laws 1969, c. 793, § 1.
- 81-805.29 Repealed. Laws 1969, c. 793, § 1.
- 81-805.30 Repealed. Laws 1969, c. 793, § 1.

**81-806 Repealed. Laws 1981, LB 545, § 52.**

**81-807 Transferred to section 37-106.**

**81-808 Transferred to section 37-107.**

**81-809 Transferred to section 37-108.**

**81-809.01 Repealed. Laws 1972, LB 1334, § 9.**

**81-810 Transferred to section 37-109.**

**81-811 Transferred to section 37-110.**

**81-812 Transferred to section 37-346.**

**81-812.01 Repealed. Laws 1981, LB 497, § 1.**

**81-812.02 Repealed. Laws 1981, LB 497, § 1.**

**81-812.03 Repealed. Laws 1981, LB 497, § 1.**

**81-812.04 Repealed. Laws 1981, LB 497, § 1.**

**81-813 Repealed. Laws 1967, c. 585, § 13.**

**81-814 Transferred to section 37-325.**

**81-814.01 Transferred to section 37-326.**

**81-814.02 Transferred to section 37-327.**

**81-815 Transferred to section 37-349.**

**81-815.01 Repealed. Laws 1978, LB 21, § 76.**

**81-815.02 Repealed. Laws 1978, LB 21, § 76.**

**81-815.03 Repealed. Laws 1978, LB 21, § 76.**

**81-815.04 Repealed. Laws 1978, LB 21, § 76.**

**81-815.05 Repealed. Laws 1978, LB 21, § 76.**

**81-815.06 Repealed. Laws 1978, LB 21, § 76.**

**81-815.07 Repealed. Laws 1978, LB 21, § 76.**

**81-815.08 Repealed. Laws 1978, LB 21, § 76.**

**81-815.09 Repealed. Laws 1978, LB 21, § 76.**

**81-815.10 Repealed. Laws 1978, LB 21, § 76.**

**81-815.11 Repealed. Laws 1978, LB 21, § 76.**

**81-815.12 Repealed. Laws 1978, LB 21, § 76.**

**81-815.13 Repealed. Laws 1978, LB 21, § 76.**

**81-815.14 Repealed. Laws 1978, LB 21, § 76.**

- 81-815.15 Repealed. Laws 1978, LB 21, § 76.
- 81-815.16 Repealed. Laws 1978, LB 21, § 76.
- 81-815.17 Repealed. Laws 1978, LB 21, § 76.
- 81-815.18 Repealed. Laws 1978, LB 21, § 76.
- 81-815.19 Repealed. Laws 1978, LB 21, § 76.
- 81-815.20 Repealed. Laws 1978, LB 21, § 76.
- 81-815.21 Transferred to section 37-337.
- 81-815.22 Transferred to section 37-338.
- 81-815.23 Transferred to section 37-339.
- 81-815.24 Transferred to section 37-340.
- 81-815.25 Transferred to section 37-341.
- 81-815.26 Transferred to section 37-329.
- 81-815.27 Transferred to section 37-342.
- 81-815.28 Transferred to section 37-343.
- 81-815.29 Transferred to section 37-344.
- 81-815.30 Transferred to section 37-345.
- 81-815.31 Transferred to section 37-347.
- 81-815.32 Transferred to section 37-336.
- 81-815.33 Transferred to section 37-348.
- 81-815.34 Repealed. Laws 1979, LB 187, § 263.
- 81-815.35 Repealed. Laws 1982, LB 592, § 2.
- 81-815.36 Transferred to section 37-1218.01.
- 81-815.37 Repealed. Laws 1972, LB 1169, § 6.
- 81-815.38 Repealed. Laws 1972, LB 1169, § 6.
- 81-815.39 Repealed. Laws 1972, LB 1169, § 6; Laws 1972, LB 1465, § 2.
- 81-815.40 Transferred to section 90-212.
- 81-815.41 Repealed. Laws 1987, LB 32, § 3.
- 81-815.42 Repealed. Laws 1987, LB 32, § 3.
- 81-815.43 Repealed. Laws 1987, LB 32, § 3.
- 81-815.44 Repealed. Laws 1987, LB 32, § 3.
- 81-815.45 Transferred to section 81-1211.

- 81-815.46 Transferred to section 90-213.
- 81-815.47 Transferred to section 90-214.
- 81-815.48 Transferred to section 90-215.
- 81-815.49 Transferred to section 90-216.
- 81-815.50 Transferred to section 37-908.
- 81-815.51 Transferred to section 37-909.
- 81-815.52 Repealed. Laws 1998, LB 922, § 415.
- 81-815.53 Transferred to section 37-907.
- 81-815.54 Repealed. Laws 1995, LB 15, § 6.
- 81-815.55 Transferred to section 37-910.
- 81-815.56 Transferred to section 37-911.
- 81-815.57 Repealed. Laws 1996, LB 296, § 4.
- 81-815.58 Transferred to section 37-1010.
- 81-815.59 Transferred to section 37-912.
- 81-815.60 Transferred to section 37-1011.
- 81-815.61 Transferred to section 37-1012.
- 81-815.62 Transferred to section 37-1013.
- 81-815.63 Transferred to section 37-1014.
- 81-815.64 Transferred to section 37-1015.
- 81-815.65 Transferred to section 37-914.

(b) COUNCIL OF STATE GOVERNMENTS

- 81-816 Repealed. Laws 2011, LB 326, § 1.
- 81-817 Repealed. Laws 2011, LB 326, § 1.
- 81-818 Repealed. Laws 2000, LB 1135, § 34.
- 81-819 Repealed. Laws 2011, LB 326, § 1.
- 81-820 Repealed. Laws 2000, LB 1135, § 34.
- 81-821 Repealed. Laws 2000, LB 1135, § 34.
- 81-822 Repealed. Laws 2000, LB 1135, § 34.
- 81-823 Repealed. Laws 2000, LB 1135, § 34.
- 81-824 Council of State Governments declared a joint governmental agency.

The Council of State Governments is declared to be a joint governmental agency of this state and of the other states which cooperate through it.

**Source:** Laws 1937, c. 110, § 9, p. 409; C.S.Supp.,1941, § 81-7309; R.S.1943, § 81-824.

(c) EMERGENCY MANAGEMENT

**81-825 Wildfire Control Act of 2013; act, how cited.**

Sections 81-825 to 81-828 shall be known and may be cited as the Wildfire Control Act of 2013.

**Source:** Laws 2013, LB634, § 1.

**81-826 Wildfire Control Act of 2013; legislative findings.**

The Legislature finds that the State of Nebraska's forests, pasture lands, and rangelands have been destroyed by catastrophic wildfires, primarily due to higher temperatures, intense and prolonged drought, increased forest fuel-loads, and the extensive spread of Eastern Red Cedar trees into forests, pasture lands, and rangelands. Because of these conditions, wildfires occur more frequently, spread and grow very rapidly upon ignition, and consume large tracts of productive land. These severe, fast-moving wildfires put the lives of citizens, emergency responders, and visitors at great risk, are difficult to control, quickly overwhelm local suppression capacity, and cost enormous amounts of money to suppress and control.

**Source:** Laws 2013, LB634, § 2.

**81-827 Wildfire control; Nebraska Emergency Management Agency; duties; legislative intent; report; contents.**

(1) Pursuant to the Wildfire Control Act of 2013, the Nebraska Emergency Management Agency shall contract for all costs to place one single-engine air tanker in Nebraska for use in fighting wildfires.

(2) It is the intent of the Legislature that the Nebraska Emergency Management Agency deploy the single-engine air tanker quickly and without delay so as to prevent the rapid spread of wildfires upon ignition.

(3) The Nebraska Emergency Management Agency shall prepare a report on or before December 1 of each year describing (a) the date and time each request to deploy a single-engine air tanker is made to the agency, (b) the date and time a single-engine air tanker was deployed in response to a request for such a tanker, (c) an explanation of the reason for any delay of more than one hour from the time of a request for deployment of a single-engine air tanker and the time of the actual deployment of such a tanker, and (d) an explanation of the reason for the denial of a request to deploy a single-engine air tanker. The report shall be submitted electronically to the Governor and to the Clerk of the Legislature.

**Source:** Laws 2013, LB634, § 3.

**81-828 Wildfire control; Nebraska Forest Service; duties.**

Pursuant to the Wildfire Control Act of 2013, the Nebraska Forest Service shall (1) administer programs to thin forests to reduce forest fuel-loads in order to substantially reduce wildfire risk, intensity, and rate of spread and develop

markets for woody biomass generated from forest thinnings, (2) provide expanded training programs for volunteer firefighters, private landowners, and communities in Nebraska in fire suppression tactics of wildfires in order to increase suppression effectiveness and safety, (3) expand the federal excess property programs sponsored by the United States Department of Agriculture and the United States Department of Defense and managed by the Nebraska Forest Service in Nebraska, (4) oversee the rehabilitation of forest lands that have been destroyed by wildfires, (5) manage single-engine air tanker bases and operations in Nebraska, and (6) contract to construct at least two single-engine air tanker bases and develop one or more mobile single-engine air tanker bases in Nebraska.

**Source:** Laws 2013, LB634, § 4.

**81-829 Repealed.** Laws 1947, c. 179, § 9.

**81-829.01 Expired.** Laws 1943, c. 191, § 1.

**81-829.02 Expired.** Laws 1943, c. 191, § 2.

**81-829.03 Repealed.** Laws 1953, c. 336, § 5.

**81-829.04 Repealed.** Laws 1951, c. 315, § 16.

**81-829.05 Transferred to section 81-829.36.**

**81-829.06 Transferred to section 81-829.37.**

**81-829.07 Transferred to section 81-829.38.**

**81-829.08 Transferred to section 81-829.39.**

**81-829.09 Transferred to section 81-829.40.**

**81-829.10 Repealed.** Laws 1973, LB 494, § 34.

**81-829.11 Repealed.** Laws 1973, LB 494, § 34.

**81-829.12 Repealed.** Laws 1973, LB 494, § 34.

**81-829.13 Transferred to section 81-829.52.**

**81-829.14 Transferred to section 81-829.53.**

**81-829.15 Transferred to section 81-829.54.**

**81-829.16 Repealed.** Laws 1953, c. 336, § 5.

**81-829.17 Repealed.** Laws 1953, c. 336, § 5.

**81-829.18 Transferred to section 81-829.46.**

**81-829.19 Transferred to section 81-829.48.**

**81-829.20 Repealed.** Laws 1973, LB 494, § 34.

**81-829.21 Transferred to section 81-829.55.**

**81-829.22 Transferred to section 81-829.49.**

**81-829.23 Transferred to section 81-829.51.**

**81-829.24 Transferred to section 81-829.58.**

**81-829.25 Transferred to section 81-829.59.**

**81-829.26 Transferred to section 81-829.60.**

**81-829.27 Transferred to section 81-829.61.**

**81-829.28 Transferred to section 81-829.62.**

**81-829.29 Transferred to section 81-829.63.**

**81-829.30 Transferred to section 81-829.64.**

**81-829.31 Adjutant General; Emergency Management Act; administer.**

There is hereby created in the office of the Adjutant General the Nebraska Emergency Management Agency. The Adjutant General shall administer the Emergency Management Act.

**Source:** Laws 1953, c. 336, § 2, p. 1106; Laws 1996, LB 43, § 16.

**Cross References**

**Emergency Management Act**, see section 81-829.36.

**For provisions relating to the Adjutant General**, see section 55-101 et seq.

**Vital resource emergency**, see sections 84-162 to 84-167.

**81-829.32 Transferred to section 81-829.65.**

**81-829.33 Governor's Emergency Cash Fund; created; use; investment.**

The Governor's Emergency Cash Fund is created. The fund shall consist of federal reimbursements received by the state for eligible state administrative costs incurred by the Nebraska Emergency Management Agency for administering federal emergency disaster declarations and revenue from all other nonfederal government sources. Except as provided in section 90-270, the fund shall be used to pay eligible costs related to state emergency disaster declarations. 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.

**Source:** Laws 2003, LB 403, § 5.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-829.34 Repealed. Laws 1971, LB 105, § 1.**

**81-829.35 Transferred to section 81-829.66.**

**81-829.36 Act, how cited.**

Sections 81-829.36 to 81-829.75 shall be known and may be cited as the Emergency Management Act.

**Source:** Laws 1951, c. 315, § 1, p. 1073; R.R.S.1943, § 81-829.05; Laws 1973, LB 494, § 1; Laws 1996, LB 43, § 17; Laws 2011, LB573, § 2.

**81-829.37 Purposes of act.**

The purposes of the Emergency Management Act and the policy of the state are to:

- (1) Reduce the vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural, technological, or manmade disasters and emergencies, civil disturbances, or hostile military or paramilitary action;
- (2) Provide an emergency management system embodying all aspects of preparedness, response, recovery, and mitigation;
- (3) Clarify and strengthen the roles of the Governor, state agencies, and local governments in the mitigation of, prevention of, preparation for, response to, and recovery from disasters, emergencies, or civil defense emergencies;
- (4) Authorize and provide for cooperation and coordination of activities relating to mitigation of, prevention of, preparedness for, response to, and recovery from disasters, emergencies, and civil defense emergencies by agencies and officers of this state and its political subdivisions and similar state, local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (5) Assist in mitigation and prevention of disasters, emergencies, and civil defense emergencies caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and
- (6) Provide for the funding of activities incidental to carrying out the purposes of the act.

**Source:** Laws 1951, c. 315, § 2(1), p. 1074; R.R.S.1943, § 81-829.06; Laws 1973, LB 494, § 2; Laws 1996, LB 43, § 18.

**81-829.38 Act, how construed.**

Nothing in the Emergency Management Act shall be construed to:

- (1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by the act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;
- (2) Interfere with the dissemination of news or comment on public affairs, but any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster, emergency, or civil defense emergency;
- (3) Affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or any personnel thereof, when on active duty, but state, city, village, county, and interjurisdictional emergency operations plans shall place reliance upon the forces available for performance of functions related to disasters, emergencies, or civil defense emergencies; or
- (4) Limit, modify, or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him or her under the Constitution of Nebraska or the statutes or common law of this state indepen-

dent of or in conjunction with any provisions of the Emergency Management Act.

**Source:** Laws 1951, c. 315, § 2(2), p. 1074; R.R.S.1943, § 81-829.07; Laws 1973, LB 494, § 3; Laws 1996, LB 43, § 19.

**81-829.39 Terms, defined.**

For purposes of the Emergency Management Act, unless the context otherwise requires:

(1) Civil defense emergency means an emergency declared by the President of the United States or Congress pursuant to applicable federal law finding that an attack upon the United States has occurred or is anticipated and that the national safety therefor requires the invocation of the emergency authority provided for by federal law. Civil defense emergency also means an enemy attack or other hostile action within the State of Nebraska or a determination by the President of the United States that any attack has been made upon or is anticipated within a designated geographic area which includes all or a part of the State of Nebraska. Any such emergency shall terminate in the manner provided by federal law or by proclamation of the Governor or resolution of the Legislature terminating such emergency;

(2) Disaster means any event or the imminent threat thereof causing widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause;

(3) Emergency means any event or the imminent threat thereof causing serious damage, injury, or loss of life or property resulting from any natural or manmade cause which, in the determination of the Governor or the principal executive officer of a local government, requires immediate action to accomplish the purposes of the Emergency Management Act and to effectively respond to the event or threat of the event;

(4) Emergency management means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to mitigate, prevent, minimize, respond to, and recover from injury and damage resulting from disasters, emergencies, or civil defense emergencies. Emergency management functions include, but need not be limited to, firefighting services, police services, medical and health services, search and rescue services, engineering services, communications and warning systems, radiological preparedness, hazardous materials response, evacuation of persons from stricken areas, emergency welfare services, emergency transportation services, restoration of public utility services, and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the functions listed in this subdivision;

(5) Emergency management worker includes any full-time or part-time paid, volunteer, or auxiliary employee of this state or other states, territories, or possessions of the federal government or any neighboring country or of any political subdivision thereof, of the District of Columbia, or of any agency or organization performing emergency management services at any place in this state subject to the order or control of or pursuant to a request of the state government or any political subdivision thereof and also includes instructors and students in emergency management educational programs approved by the

Nebraska Emergency Management Agency or otherwise under the provisions of the Emergency Management Act;

(6) Hazard mitigation means measures which will eliminate or reduce the potential for damage to an area or facility from the effects of a future disaster, emergency, or civil defense emergency;

(7) Local government means a county, village, or city of any class;

(8) Political subdivision means a city, village, county, school district, public power district, natural resources district, and any other unit of government below the state level, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(9) Principal executive officer means the mayor in a city of any class or the elected chairperson of the governing body of a village or county;

(10) State emergency response team means an organization for emergency management established in accordance with the provisions of sections 81-829.52 to 81-829.54 by state authority to supplement city, village, county, or interjurisdictional emergency management organizations in a stricken area; and

(11) Technological hazard means a hazard emanating from the manufacture, transportation, and use of such substances as radioactive materials, chemicals, explosives, flammables, agricultural pesticides, herbicides, disease agents, oil spills, and debris from space.

**Source:** Laws 1951, c. 315, § 3, p. 1074; R.R.S.1943, § 81-829.08; Laws 1973, LB 494, § 4; Laws 1996, LB 43, § 20; Laws 1999, LB 87, § 91.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

A snow emergency declaration, the purpose of which is to notify citizens about snow removal activities and the need to refrain from parking on designated routes, does not rise to the level of an emergency under the Emergency Management Act. *Stinson v. City of Lincoln*, 9 Neb. App. 642, 617 N.W.2d 456 (2000).

### 81-829.40 Governor; powers and duties.

(1) The Governor shall be responsible for meeting the dangers to the state and people presented by disasters, emergencies, and civil defense emergencies, and in the event of disaster, emergency, or civil defense emergency beyond local control, he or she may assume direct operational control over all or any part of the emergency management functions within this state. He or she shall have general direction and control of emergency management and the Nebraska Emergency Management Agency and shall be responsible for carrying out the provisions of the Emergency Management Act.

(2) In order to effect the policy and purposes of the act, the Governor may issue proclamations and make, amend, and rescind the necessary orders, rules, and regulations to carry out the act.

(3) A state of emergency proclamation shall be issued by the Governor if he or she finds that a disaster, emergency, or civil defense emergency has occurred or that the occurrence or threat thereof is imminent. All proclamations issued under this subsection shall indicate the nature of the disaster, emergency, or civil defense emergency, the area or areas threatened, and the conditions which have brought about the state of emergency. All proclamations shall be dissemi-

nated promptly by means calculated to bring the contents to the attention of the general public and shall be promptly filed with the Nebraska Emergency Management Agency, the Secretary of State, and the clerks of the local governments in the area to which it applies. The proclamation shall continue in effect until the Governor finds that the threat or danger has passed or the disaster, emergency, or civil defense emergency has been dealt with to the extent that those conditions no longer exist and terminates the proclamation by letter of notice to such agency, the Secretary of State, and the clerks of the local governments in the area to which it applies. The Legislature by resolution may terminate a state of emergency proclamation at any time, whereupon the Governor shall terminate the proclamation by letter of notice to such agency, the Secretary of State, and the clerks of the local governments in the area to which it applies.

(4) A state of emergency proclamation shall activate state, city, village, county, and interjurisdictional emergency management organizations and emergency operations plans applicable to the local government or area in question and shall be the authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to the act or any other provision of law relating to disasters, emergencies, or civil defense emergencies.

(5) During the continuance of any state of emergency, the Governor shall be commander in chief of the organized and unorganized militia and of all other forces available for emergency management duty. To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate proclamations, orders, rules, and regulations, but nothing shall restrict his or her authority to do so by orders issued at the time of the disaster, emergency, or civil defense emergency.

(6) In addition to any other powers conferred upon the Governor by law, he or she may:

(a) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the disaster, emergency, or civil defense emergency;

(b) Utilize all available resources of the state government and of each political subdivision of the state as are reasonably necessary to cope with the disaster, emergency, or civil defense emergency;

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management;

(d) Subject to any applicable requirements for compensation under section 81-829.57, commandeer or utilize any private property if he or she finds this necessary to cope with the disaster, emergency, or civil defense emergency;

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he or she deems this action necessary for the preservation of life or other emergency management;

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in the area;

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles; and

(i) Make provisions for the availability and use of temporary emergency housing.

(7) In the event of a civil defense emergency, the Governor shall assume direct operational control over all or any part of the emergency management functions within this state.

**Source:** Laws 1951, c. 315, § 4(1), p. 1076; R.R.S.1943, § 81-829.09; Laws 1973, LB 494, § 5; Laws 1996, LB 43, § 21; Laws 2014, LB390, § 2.

Effective date July 18, 2014.

#### **81-829.41 Agency; Adjutant General; powers and duties.**

(1) The Nebraska Emergency Management Agency shall be maintained in the office of the Adjutant General. The Adjutant General shall be the director of the agency, shall administer the Emergency Management Act subject to the direction and control of the Governor, and shall receive such compensation for these services as shall be determined by the Governor. The agency shall have an assistant director and such other professional, technical, secretarial, and clerical employees as are necessary for the performance of its functions.

(2) The agency shall maintain an emergency operations plan and keep it current. The plan may include, but need not be limited to:

(a) A history of Nebraska disasters, emergencies, and civil defense emergencies;

(b) An analysis of past and potential disasters, emergencies, and civil defense emergencies, including an identification of the functions and resources required to cope with such occurrences. The expected frequency of occurrence, along with the severity of effect, shall indicate the priority of preparedness efforts of the emergency management organizations of the state;

(c) Measures to be undertaken to accomplish damage assessment and situation analysis, warning, direction and control, coordination of operating forces, emergency resource management, emergency information and official instructions, communications and other necessary support to emergency response operations, and coordination and cooperation of federal, state, local, and nongovernmental agencies so as to provide a prompt and effective response to disasters, emergencies, and civil defense emergencies to prevent and minimize the injury and damage;

(d) The provision of relief and recovery assistance to individuals, political subdivisions of the state, and state agencies;

(e) Identification of areas of the state particularly vulnerable to disaster, emergency, or civil defense emergency;

(f) Recommendations for preventive and preparedness measures designed to eliminate or reduce disasters, emergencies, or civil defense emergencies or their impact, including, but not limited to, zoning, building, and other land-use control, and safety measures for securing mobile homes or other nonpermanent or semipermanent structures;

(g) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster, emergency, or civil defense emergency;

(h) Assistance in designing city, village, county, and interjurisdictional emergency operations plans;

(i) Preparation and distribution to the appropriate state and political subdivision officials of catalogs of federal, state, and private disaster assistance programs; and

(j) Other necessary matters.

(3) The Nebraska Emergency Management Agency shall take an integral part in the development and revision of city, village, county, and interjurisdictional emergency operations plans prepared under section 81-829.46. It shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions and to city, village, county, and interjurisdictional emergency management organizations. Such personnel shall consult with such political subdivisions and organizations on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular city, village, county, and interjurisdictional emergency operations plans are intended to apply and may suggest or require revisions.

(4) In preparing and revising the Nebraska emergency operations plans, the agency shall seek the advice and assistance of other agencies of government and the private sector. In advising city, village, county, and interjurisdictional emergency management organizations, the Nebraska Emergency Management Agency shall encourage them to also seek advice from these sources.

(5) The Nebraska emergency operations plans or any part thereof may be incorporated in rules or regulations of the agency.

(6) The agency shall:

(a) Determine the requirements of the state and its political subdivisions for basic necessities such as food, clothing, and shelter in various disaster, emergency, or civil defense emergency situations;

(b) Procure and pre-position emergency supplies, materials, and equipment;

(c) Adopt and promulgate rules and regulations setting out standards and requirements for city, village, county, and interjurisdictional emergency operations plans;

(d) Periodically review city, village, county, and interjurisdictional emergency operations plans;

(e) Provide for state emergency response teams;

(f) Establish and operate or assist local governments, their emergency management organizations, and interjurisdictional emergency management organizations in establishing and operating training programs and programs of public information;

(g) Make surveys of such industries, resources, and facilities, both public and private, within the state as are necessary to carry out the purposes of the Emergency Management Act;

(h) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) Establish a register of persons with training and skills important in disaster prevention, mitigation, preparedness, response, and recovery and emergency management;

(j) Establish a register of mobile and construction equipment and temporary housing available for use in a disaster or emergency;

(k) Prepare for issuance by the Governor proclamations, orders, rules, and regulations as are necessary or appropriate in coping with disasters, emergencies, and civil defense emergencies;

(l) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of the act and in implementing programs for disaster prevention, mitigation, preparedness, response, and recovery and emergency management;

(m) Coordinate state emergency response as directed by the Governor;

(n) Cooperate with other emergency management agencies and public agencies in the development of emergency management registries which include persons with functional needs and the families and guardians of such persons for purposes of planning for assistance for such persons and their families and guardians before, during, and after a disaster or other emergency. Participation in an emergency management registry by persons with functional needs and their families shall be voluntary. Information obtained by emergency management agencies or other public agencies for such purposes shall not be considered a public record under section 84-712.01. All information acquired pursuant to this subdivision is confidential and shall not be disclosed or released except to other agencies which have a legitimate and official interest in the information for carrying out the purposes of this subdivision. Any person acquiring information pursuant to this subdivision who intentionally discloses or releases such information in violation of this subdivision is guilty of a Class III misdemeanor; and

(o) Do other things necessary, incidental, or appropriate for the implementation of the act.

**Source:** Laws 1973, LB 494, § 6; Laws 1996, LB 43, § 22; Laws 2013, LB434, § 1.

#### **81-829.42 Governor's Emergency Program; established.**

(1) The Legislature recognizes that, while appropriations are adequate to meet the normal needs, the necessity exists for anticipating and making advance provision to care for the unusual and extraordinary burdens imposed on the state and its political subdivisions by disasters, emergencies, or civil defense emergencies. To meet such situations, it is the intention of the Legislature to confer emergency powers on the Governor, acting through the Adjutant General and the Nebraska Emergency Management Agency, and to vest him or her with adequate power and authority within the limitation of available funds appropriated to the Governor's Emergency Program to meet any disaster, emergency, or civil defense emergency.

(2) There is hereby established the Governor's Emergency Program. Funds appropriated to the program shall be expended, upon direction of the Gover-

nor, for any state of emergency. The state of emergency proclamation shall set forth the emergency and shall state that it requires the expenditure of public funds to furnish immediate aid and relief. The Adjutant General shall administer the funds appropriated to the program.

(3) It is the intent of the Legislature that the first recourse shall be to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds are unreasonably great, he or she may make funds available from the Governor's Emergency Program. Expenditures may be made upon the direction of the Governor for any or all emergency management functions or to meet the intent of the state emergency operations plans as outlined in section 81-829.41. Expenditures may also be made to state and federal agencies to meet the matching requirement of any applicable assistance programs.

(4) Assistance shall be provided from the funds appropriated to the Governor's Emergency Program to political subdivisions of this state which have suffered from a disaster, emergency, or civil defense emergency to such an extent as to impose a severe financial burden exceeding the ordinary capacity of the subdivision affected. Applications for aid under this section shall be made to the Nebraska Emergency Management Agency on such forms as shall be prescribed and furnished by the agency. The forms shall require the furnishing of sufficient information to determine eligibility for aid and the extent of the financial burden incurred. The agency may call upon other agencies of the state in evaluating such applications. The Adjutant General shall review each application for aid under this section and recommend its approval or disapproval, in whole or in part, to the Governor. If the Governor approves, he or she shall determine and certify to the Adjutant General the amount of aid to be furnished. The Adjutant General shall thereupon issue his or her voucher to the Director of Administrative Services who shall issue his or her warrants therefor to the applicant.

(5) When a state of emergency has been proclaimed by the Governor, the Adjutant General, upon order of the Governor, shall have authority to expend funds for purposes including, but not limited to:

(a) The purposes of the Emergency Management Act, including emergency management functions and the responsibilities of the Governor as outlined in the act;

(b) Employing for the duration of the state of emergency additional personnel and contracting or otherwise procuring all necessary appliances, supplies, and equipment;

(c) Performing services for and furnishing materials and supplies to state government agencies and local governments with respect to performance of any duties enjoined by law upon such agencies and local governments which they are unable to perform because of extreme climatic phenomena and receiving reimbursement in whole or in part from such agencies and local governments able to pay therefor under such terms and conditions as may be agreed upon by the Adjutant General and any such agency or local government;

(d) Performing services for and furnishing materials to any individual in connection with alleviating hardship and distress growing out of extreme climatic phenomena and receiving reimbursement in whole or in part from such individual under such terms as may be agreed upon by the Adjutant General and such individual;

- (e) Opening up, repairing, and restoring roads and highways;
  - (f) Repairing and restoring bridges;
  - (g) Furnishing transportation for supplies to alleviate suffering and distress;
  - (h) Restoring means of communication;
  - (i) Furnishing medical services and supplies to prevent the spread of disease and epidemics;
  - (j) Quelling riots and civil disturbances;
  - (k) Training individuals or governmental agencies for the purpose of perfecting the performance of emergency management duties as provided in the Nebraska emergency operations plans;
  - (l) Procurement and storage of special emergency supplies or equipment, determined by the Adjutant General to be required to provide rapid response by state government to assist local governments in impending or actual disasters, emergencies, or civil defense emergencies;
  - (m) Clearing or removing debris and wreckage which may threaten public health or safety from publicly owned or privately owned land or water; and
  - (n) Such other measures as are customarily necessary to furnish adequate relief in cases of disaster, emergency, or civil defense emergency.
- (6) If aerial fire suppression or hazardous material response is immediately required, the Adjutant General may make expenditures of up to twenty-five thousand dollars per event without a state of emergency proclamation issued by the Governor.
- (7) The Governor may receive such voluntary contributions as may be made from any nonfederal source to aid in carrying out the purposes of this section and shall credit the same to the Governor's Emergency Cash Fund.
- (8) All obligations and expenses incurred by the Governor in the exercise of the powers and duties vested in the Governor by this section shall be paid by the State Treasurer out of available funds appropriated to the Governor's Emergency Program, and the Director of Administrative Services shall draw his or her warrants upon the State Treasurer for the payment of such sum, or so much thereof as may be required, upon receipt by him or her of proper vouchers duly approved by the Adjutant General.
- (9) This section shall be liberally construed in order to accomplish the purposes of the Emergency Management Act and to permit the Governor to adequately cope with any disaster, emergency, or civil defense emergency which may arise, and the powers vested in the Governor by this section shall be construed as being in addition to all other powers presently vested in him or her and not in derogation of any existing powers.
- (10) Such funds as may be made available by the government of the United States for the purpose of alleviating distress from disasters, emergencies, and civil defense emergencies may be accepted by the State Treasurer and shall be credited to a separate and distinct fund unless otherwise specifically provided in the act of Congress making such funds available or as otherwise allowed and provided by state law.

**Source:** Laws 1973, LB 494, § 7; Laws 1975, LB 612, § 2; Laws 1986, LB 258, § 34; Laws 1995, LB 7, § 107; Laws 1996, LB 43, § 23;

Laws 2003, LB 403, § 8; Laws 2012, LB766, § 1; Laws 2014, LB390, § 3.

Effective date July 18, 2014.

**81-829.43 Prevention measures; procedure.**

(1) In addition to prevention measures included in the state, city, village, county, and interjurisdictional emergency operations plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters, emergencies, and civil defense emergencies. At his or her direction and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards, shall make studies of prevention-related matters. The Governor, from time to time, shall make such recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or mitigation of the harmful consequences of disasters, emergencies, and civil defense emergencies. The recommendations submitted to the Legislature shall be submitted electronically.

(2) The appropriate state agencies, in conjunction with the Nebraska Emergency Management Agency, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of mitigating or avoiding the dangers caused by any such occurrence or the consequences thereof.

(3) If the agency believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster, emergency, or civil defense emergency of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude thereof, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor. If the Governor upon review of the recommendation finds after public hearing that the changes are essential, he or she shall so recommend to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his or her recommendations is taken within the time specified by the Governor, he or she shall so inform the Legislature electronically and request appropriate legislative action to mitigate the impact of a disaster, emergency, or civil defense emergency.

(4) The Governor, at the same time that he or she makes recommendations pursuant to subsection (3) of this section, may suspend the standard or control which he or she finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by resolution of the Legislature or amended by the Governor. During the time it is in effect, the standard or control contained in the Governor's regulation shall be administered and given full effect by all relevant regulatory agencies of the state and local governments

to which it applies. The Governor's action shall be subject to judicial review but shall not be subject to temporary stay pending litigation.

**Source:** Laws 1973, LB 494, § 8; Laws 1988, LB 352, § 168; Laws 1996, LB 43, § 24; Laws 1996, LB 966, § 1; Laws 2012, LB782, § 170.

**81-829.44 Repealed. Laws 1996, LB 43, § 54.**

**81-829.45 Agency; weather conditions; continuously apprise.**

The Nebraska Emergency Management Agency shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster or emergency.

**Source:** Laws 1973, LB 494, § 10; Laws 1996, LB 43, § 25; Laws 1996, LB 966, § 2.

**81-829.46 Local government; Governor; powers; duties; performance of functions.**

(1) The elected officers of local governments shall be responsible for ensuring that emergency management services are provided to their citizens and for coordinating emergency operations in their respective jurisdictions.

(2) Each local government shall be within the jurisdiction of and served by the Nebraska Emergency Management Agency and shall participate in a city, village, county, or interjurisdictional emergency management organization. Each county or interjurisdictional emergency management organization shall cooperate with and perform emergency management functions for the local governments located within the organization's boundaries but shall not have responsibility for emergency management services within a city or village having its own emergency management organization. Each city or village may maintain a city or village emergency management organization which, if formed, shall be the primary organization for emergency management serving that city or village. Any county or interjurisdictional emergency management organization may assist in emergency management functions for that city or village if approved by the city or village emergency management organization. Each county may maintain a county emergency management organization which shall be the primary organization for emergency management for that county. Any city, village, or interjurisdictional emergency management organization may assist in emergency management functions for that county if approved by the county emergency management organization.

(3) Each city, village, county, or interjurisdictional emergency management organization, if formed, shall have either (a) a full-time director or (b) a full-time deputy director and such additional personnel as may be needed, appointed in accordance with the agreement establishing the organization. Such director shall have direct responsibility for the organization, administration, and operation of such emergency management organization subject to the direction and control of the principal executive officer for the local government or in accordance with such agreement. A person may serve as a director for more than one emergency management organization serving an area.

(4) The Governor may determine that some cities need emergency management organizations of their own. The Governor shall, after making such determination, require that such emergency management organizations be established and maintained by issuing a directive in the form of a rule or

regulation. The Governor shall make the determination on the basis of a city's vulnerability and capability of response related to population size and concentration. The Nebraska Emergency Management Agency shall publish and keep current a list of cities required to have an emergency management organization.

(5) Any provision of the Emergency Management Act or other law to the contrary notwithstanding, the Governor may require a local government to establish and maintain an emergency management organization jointly with one or more contiguous local governments if he or she finds that the establishment and maintenance of or participation in such an organization is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services or emergency management functions under other provisions of the act. Such interjurisdictional organizations shall be organized generally in accord with the Interlocal Cooperation Act and the planning and development regions created in section 13-1901.

(6) City, village, county, or interjurisdictional emergency management directors or coordinators or their assistants or deputies, who are required by the Emergency Management Act or rules and regulations of the Governor to devote full time to their duties, shall be qualified and certified in accord with criteria established for the state by the Nebraska Emergency Management Agency. Such directors or coordinators shall be paid for their services in an amount comparable to other officers of local governments.

(7) Each local government shall have a liaison officer designated to facilitate cooperation with emergency management organizations and to ensure that emergency management services are provided to the citizens of that local government. The liaison officers of local governments and the directors of the emergency management organizations shall communicate frequently to facilitate joint emergency preparedness efforts. For local governments which maintain an emergency management organization, the director or coordinator may serve as the liaison officer.

(8) The principal executive officer of each local government of the state shall notify the Nebraska Emergency Management Agency of the manner in which the local government is providing or securing emergency management services, identify the person who heads the entity from which the service is obtained, and furnish such additional information as the agency requires.

(9) Each city, village, county, or interjurisdictional emergency management organization shall prepare and keep current a city, village, county, or interjurisdictional emergency operations plan for its jurisdiction. Such plans shall be in conformance with the requirements established in the act.

(10) Each city, village, county, or interjurisdictional emergency management organization shall prepare, keep current, and distribute to all appropriate officials in written form a clear and complete statement of the disaster and emergency management responsibilities of all local entities and officials and of the emergency response chain of command.

**Source:** Laws 1951, c. 315, § 7, p. 1079; Laws 1963, c. 516, § 1, p. 1632; R.R.S.1943, § 81-829.18; Laws 1973, LB 494, § 11; Laws 1992, LB 573, § 11; Laws 1996, LB 43, § 26.

## Cross References

**Interlocal Cooperation Act**, see section 13-801.

It is a reasonable construction of the joint resolution authorized by this section that either of the parties may discharge employees. *Heinzman v. County of Hall*, 213 Neb. 268, 328 N.W.2d 764 (1983).

### **81-829.47 Interjurisdictional emergency management arrangement; Governor findings.**

(1) If the Governor finds that two or more adjoining counties would be better served by an interjurisdictional emergency management arrangement than by maintaining separate emergency management organizations and services, he or she may delineate by order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to a disaster, emergency, or civil defense emergency in that area and direct such steps to be taken as are necessary, including the creation of an interjurisdictional emergency management relationship, a joint emergency operations plan, mutual aid, or an interjurisdictional emergency management organization. A finding of the Governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, mitigation, preparedness, response, and recovery and emergency management system without such interjurisdictional arrangement, such as:

(a) Small or sparse population;

(b) Limitations on public financial resources severe enough to make maintenance of separate emergency management organizations and services unreasonably burdensome;

(c) Unusual vulnerability to disaster, emergency, or civil defense emergency as evidenced by past history, topographical features, drainage characteristics, potential for disaster, emergency, or civil defense emergency, and presence of facilities or operations prone to disaster, emergency, or civil defense emergency;

(d) The interrelated character of the counties in a multicounty area; or

(e) Other relevant conditions or circumstances.

(2) If the Governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states and that it would be desirable to establish an interstate relationship, mutual aid, or an interstate emergency management organization, he or she shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact, any resulting agreements may be considered supplemental agreements pursuant to Article 6 of that compact.

(3) If the other jurisdictions with which the Governor proposes to cooperate pursuant to subsection (2) of this section have not enacted the compact, he or she may negotiate special agreements with the jurisdictions. Any agreement, if sufficient authority for the making thereof does not otherwise exist, shall become effective only after its text has been communicated electronically to the Legislature and if the Legislature has not disapproved it prior to adjournment of the next session competent to consider it or within thirty days of its submission, whichever is later.

**Source:** Laws 1973, LB 494, § 12; Laws 1996, LB 43, § 27; Laws 2012, LB782, § 171.

## Cross References

Interstate Civil Defense and Disaster Compact, see section 81-829.56.

**81-829.48 Emergency management aid and assistance; mutual aid arrangements; interjurisdictional emergency management agreement.**

(1) The director or coordinator of each city, village, county, or interjurisdictional emergency management organization shall, in collaboration with other public and private entities within this state, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of disaster, emergency, or civil defense emergency too great to be dealt with unassisted. Such arrangements shall be consistent with the state emergency operations plan, and in time of emergency it shall be the duty of each city, village, county, or interjurisdictional emergency management organization to render assistance in accordance with the provisions of such mutual aid arrangements.

(2) The director or coordinator of each city, village, county, or interjurisdictional emergency management organization may, subject to the approval of the Governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of disaster, emergency, or civil defense emergency too great to be dealt with unassisted.

(3) It shall be a sufficient reason for the Governor to require an interjurisdictional emergency management agreement or arrangement pursuant to section 81-829.47 if the area and local governments involved have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the local governments have not already made adequate provision for mutual aid, but in requiring the making of an interjurisdictional emergency management arrangement to accomplish the purposes of this section, the Governor need not require establishment and maintenance of an interjurisdictional emergency management organization or arrangement for any other disaster, emergency, or civil defense emergency purposes.

**Source:** Laws 1951, c. 315, § 8(1), p. 1080; R.R.S.1943, § 81-829.19; Laws 1973, LB 494, § 13; Laws 1996, LB 43, § 28.

**81-829.49 Local government appropriations.**

Each local government shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such local government for the payment of expenses of its city, village, county, or interjurisdictional emergency management organization and in furthering the purposes of the Emergency Management Act.

**Source:** Laws 1951, c. 315, § 10(1), p. 1081; R.R.S.1943, § 81-829.22; Laws 1973, LB 494, § 14; Laws 1996, LB 43, § 29.

**81-829.50 Local emergency; declared; principal executive officer of a local government; effect; interjurisdictional emergency management organization.**

(1) A local emergency may be declared only by the principal executive officer of a local government who finds that conditions defined as a disaster or an emergency exist or by a person who by resolution has been authorized and designated by the governing board of a local government to determine that an emergency within the scope of his or her authorization exists. A copy of the

resolution shall be filed with the Nebraska Emergency Management Agency to be effective. The proclamation shall continue in effect until the principal executive officer finds that the disaster or emergency has been dealt with to the extent that those conditions no longer exist. The local governing body by resolution may terminate a local state of emergency proclamation at any time, and upon such termination the principal executive officer shall terminate the proclamation. Any order or proclamation declaring, continuing, or terminating a local emergency shall be given prompt and general publicity and shall be filed promptly with the clerk of the local government and the Nebraska Emergency Management Agency.

(2) The effect of a declaration of a local emergency shall be to activate the response and recovery aspects of any and all applicable city, village, county, or interjurisdictional emergency operations plans and to authorize the furnishing of aid and assistance under such plans.

(3) No interjurisdictional emergency management organization or official thereof may declare a local emergency unless expressly authorized by the agreement pursuant to which the organization functions, but an interjurisdictional emergency management organization shall provide aid and services in accordance with the agreement and emergency operations plan pursuant to which it functions.

**Source:** Laws 1973, LB 494, § 15; Laws 1996, LB 43, § 30.

**81-829.51 Local government; emergency expenditures; vote of governing body; when.**

In the event of a disaster, emergency, or civil defense emergency, each local government may make emergency expenditures, enter into contracts, and incur obligations for emergency management purposes regardless of existing statutory limitations and requirements pertaining to appropriation, budgeting, levies, or the manner of entering into contracts. If any such expenditure, contract, or obligation will be in excess of or in violation of existing statutory limitations or requirements, then before any such expenditure, contract, or obligation is undertaken it shall be approved by a vote of the governing body of such local government, and such governing body may not vote its approval unless it has secured the certificate of the city, village, county, or interjurisdictional emergency management director serving such local government that such action is necessary in the public interest for emergency management purposes.

**Source:** Laws 1951, c. 315, § 10(2), p. 1081; R.R.S.1943, § 81-829.23; Laws 1973, LB 494, § 16; Laws 1996, LB 43, § 31.

**81-829.52 State emergency response teams; establish; team leader; appointment; duties.**

Upon orders of the Governor, the Adjutant General is authorized to establish such number of state emergency response teams as may be necessary to reinforce emergency management organizations in stricken areas and with due consideration of the plans of the federal government and of other states. The Adjutant General shall appoint a team leader for each team who shall have primary responsibility for the organization, administration, and operation of such team. The team leader shall keep and maintain a roster of members of the team, and only such persons whose names appear on the roster shall be deemed members of such team and entitled to the benefits provided by section

81-829.53. No political subdivision shall be entitled to reimbursement as provided in section 81-829.54 unless the individual on whose behalf reimbursement is sought was duly enrolled on the roster as provided in this section at the time the obligation was incurred. State emergency response teams shall perform their functions in any part of the state or, upon the conditions specified in mutual aid plans and emergency management agreements, in accordance with the Interstate Civil Defense and Disaster Compact, and in this section, in other states.

**Source:** Laws 1951, c. 315, § 6(1), p. 1077; R.R.S.1943, § 81-829.13; Laws 1973, LB 494, § 17; Laws 1996, LB 43, § 32.

**Cross References**

Interstate Civil Defense and Disaster Compact, see Volume 2A Appendix section 1-109.

**81-829.53 State emergency response teams; personnel; powers; duties; rights; immunities; compensation.**

Personnel of state emergency response teams while on duty, whether within or without the state, shall: (1) If they are employees of the state, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment; (2) if they are employees of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment; and (3) if they are not employees of the state or a political subdivision thereof, be entitled to compensation by the state at rates to be established by the Governor and shall be entitled to the same rights and immunities as are provided by law for the employees of this state. State emergency response teams shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving and shall be reimbursed for all actual and necessary travel and subsistence expenses in accordance with sections 81-1174 to 81-1177.

**Source:** Laws 1951, c. 315, § 6(2), p. 1078; R.R.S.1943, § 81-829.14; Laws 1973, LB 494, § 18; Laws 1981, LB 204, § 176; Laws 1996, LB 43, § 33.

**81-829.54 State emergency response teams; employees; expenses; political subdivisions; reimbursement by state; rental of equipment; payment; damages.**

(1) The state shall reimburse a political subdivision for (a) the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of employees of such political subdivision while serving as members of a state emergency response team as provided in sections 81-1174 to 81-1177, (b) all payments for death, disability, or injury of such employees incurred in the course of such duty as provided in the Nebraska Workers' Compensation Act, and (c) all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such state emergency response team.

(2) The state shall pay a fee for rental of privately owned equipment used in the operation of a state emergency response team and shall also pay for any loss or damage to privately owned equipment used in emergency response. The fee for rental of such privately owned equipment shall be fixed, and any loss or damage to such equipment shall be assessed by a board consisting of three

persons to be appointed by the Governor, one of whom shall be the materiel administrator of the materiel division of the Department of Administrative Services.

**Source:** Laws 1951, c. 315, § 6(3), p. 1078; Laws 1953, c. 336, § 3, p. 1107; R.R.S.1943, § 81-829.15; Laws 1973, LB 494, § 19; Laws 1981, LB 204, § 177; Laws 1996, LB 43, § 34.

**Cross References**

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**81-829.55 Immunity from liability for activities; covered by Nebraska Workers' Compensation Act; licenses, not required; emergency management worker; powers, duties, immunities, privileges.**

(1) All functions provided for in the Emergency Management Act and all other activities relating to emergency management are hereby declared to be governmental functions. The United States, the state, any political subdivision thereof, any other agencies of the United States, the state, or a political subdivision thereof, and, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker complying with or reasonably attempting to comply with the provisions of the act, any emergency management act of Congress, or any order, rule, or regulation promulgated pursuant to the act or any emergency management act of Congress or acting pursuant to any ordinance relating to black-out or other precautionary measures enacted by any political subdivision of the state shall not be liable for the death of or injury to persons or for damage to property as a result of any such activity. This section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled under the Emergency Management Act, under the Nebraska Workers' Compensation Act, or under any pension law or the right of any person to receive any benefits or compensation under any act of Congress.

(2) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who in the course of performing duties as such practices such professional, mechanical, or other skill during a civil defense emergency or declared state of emergency.

(3) Any emergency management worker performing emergency management services at any place in this state pursuant to agreements, compacts, or arrangements for mutual aid and assistance to which the state or a political subdivision thereof is a party shall possess the same powers, duties, immunities, and privileges he or she would ordinarily possess if performing such duties in the state, province, or political subdivision thereof in which normally employed or rendering services.

**Source:** Laws 1951, c. 315, § 9, p. 1080; Laws 1963, c. 517, § 1, p. 1633; R.R.S.1943, § 81-829.21; Laws 1973, LB 494, § 29; Laws 1975, LB 612, § 3; Laws 1996, LB 43, § 35.

**Cross References**

**Nebraska Workers' Compensation Act**, see section 48-1,110.

In order for the district court to have subject matter jurisdiction under the disaster and civil defense statutes, the plaintiff must allege facts which show either (1) that the political subdivision's actions were not undertaken when complying with or

reasonably attempting to comply with the provisions relating to civil defense set forth in this section or an order, rule, or regulation promulgated thereunder and therefore the general

immunity does not apply, or (2) that the political subdivision's actions constituted willful misconduct, gross negligence, or bad faith so as to fall within an exception to the general immunity.

Lawry v. County of Sarpy, 254 Neb. 193, 575 N.W.2d 605 (1998).

**81-829.56 Interstate Civil Defense and Disaster Compact; enactment; other agreements or compacts; approval.**

(1) This state hereby enacts into law and enters into the Interstate Civil Defense and Disaster Compact with all states bordering this state which have enacted or shall hereafter enact the compact in the form substantially as adopted in this state.

(2) The Governor may enter into the compact with any state which does not border this state if he or she finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) of this section shall be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states.

(4) If any person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(5) In addition to the Interstate Civil Defense and Disaster Compact, the Governor may enter into and execute on behalf of the State of Nebraska mutual aid agreements or emergency preparedness compacts with other states. Any such agreement or compact shall provide for reimbursement of all costs incurred by the State of Nebraska for actions taken in another state, for indemnification of the State of Nebraska and its employees against all claims, costs, or fees arising from actions taken in another state, and for termination of the agreement or assistance as necessary to meet disasters, emergencies, or other needs of the State of Nebraska. Any mutual aid agreement or emergency preparedness compact other than the Interstate Civil Defense and Disaster Compact which does not meet the requirements specified in this subsection shall be submitted electronically to the Legislature for approval by the Legislature before it can become effective.

**Source:** Laws 1973, LB 494, § 21; Laws 1996, LB 43, § 36; Laws 2012, LB782, § 172.

**81-829.57 Persons within the state; conduct; personal services; compensation for property; claim; file.**

(1) Each person within this state shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disasters, emergencies, or civil defense emergencies. This obligation shall include appropriate personal service and use or restriction on the use of property in time of disaster, emergency, or civil defense emergency. The Emergency Management Act shall not be construed to increase or decrease these obligations, but the act recognizes their existence under the Constitution of Nebraska and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this subsection are exceeded in a particular case and

then only to the extent that the claimant may not be deemed to have volunteered his or her services or property without compensation.

(2) No personal services may be compensated by the state or any subdivision or agency thereof, except pursuant to statute or local law, resolution, or ordinance.

(3) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster, emergency, or civil defense emergency and its use or destruction was ordered by the Governor or a member of the emergency management forces of this state to whom the Governor has duly delegated such authority.

(4) Any person claiming compensation for the use, damage, loss, or destruction of property under the act shall file a claim therefor with the Nebraska Emergency Management Agency in the form and manner the agency provides.

(5) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed upon between the claimant and the agency, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

(6) Nothing in this section shall apply to or authorize compensation for the destruction or damaging of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

**Source:** Laws 1973, LB 494, § 22; Laws 1996, LB 43, § 37.

Cross References

For eminent domain procedures, see section 76-701 et seq.

**81-829.58 Emergency management; supplies and services from federal government; funds; disposition.**

Whenever the federal government or any agency or officer thereof offers to the state or, through the state, to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of disaster response and emergency management, the state, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its principal executive officer or governing body, may accept such offer. Upon such acceptance the Governor of the state or principal executive officer or governing body of such political subdivision may authorize any officer of the state or such political subdivision to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. All such funds received on behalf of the state shall be remitted to the State Treasurer for credit to a separate and distinct fund unless otherwise specifically provided in the act of Congress making such funds available, or as otherwise allowed and provided by state law.

**Source:** Laws 1951, c. 315, § 10(3), p. 1081; Laws 1965, c. 342, § 2, p. 973; R.R.S.1943, § 81-829.24; Laws 1973, LB 494, § 23; Laws 1996, LB 43, § 38; Laws 2003, LB 403, § 9.

**81-829.59 Emergency management; supplies and services from private entities; funds; disposition.**

Whenever any person, firm, or corporation offers to the state or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of disaster response and emergency management, the state, acting through the Governor, or such political subdivision, acting through its principal executive officer or governing body, may accept such offer. Upon such acceptance the Governor of the state or principal executive officer or governing body of such political subdivision may authorize any officer of the state or of the political subdivision to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, subject to the terms of the offer. All such funds received on behalf of the state shall be remitted to the State Treasurer for credit to the Governor's Emergency Cash Fund.

**Source:** Laws 1951, c. 315, § 10(4), p. 1082; Laws 1965, c. 342, § 3, p. 974; R.R.S.1943, § 81-829.25; Laws 1973, LB 494, § 24; Laws 1996, LB 43, § 39; Laws 2003, LB 403, § 10.

**81-829.60 Emergency management; utilization of services, equipment, supplies, and facilities of existing departments and agencies of state.**

In carrying out the Emergency Management Act, the Governor and the principal executive officers or governing bodies of the political subdivisions of the state shall utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and its political subdivisions to the maximum extent practicable. The officers and personnel of all such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor and to the disaster response and emergency management organizations of the state upon request.

**Source:** Laws 1951, c. 315, § 11, p. 1082; R.R.S.1943, § 81-829.26; Laws 1973, LB 494, § 25; Laws 1996, LB 43, § 40.

**81-829.61 Emergency management organizations; political activities prohibited.**

No emergency management organization established under the Emergency Management Act shall participate in any form of political activity nor shall it be employed directly or indirectly for political purposes.

**Source:** Laws 1951, c. 315, § 12, p. 1082; R.R.S.1943, § 81-829.27; Laws 1973, LB 494, § 26; Laws 1996, LB 43, § 41.

**81-829.62 Emergency management; personnel; advocacy of subversive activities against government; prohibited.**

No person shall be employed or associated in any capacity in any emergency management organization established under the Emergency Management Act who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States.

**Source:** Laws 1951, c. 315, § 13, p. 1082; Laws 1953, c. 336, § 4, p. 1108; R.R.S.1943, § 81-829.28; Laws 1973, LB 494, § 27; Laws 1996, LB 43, § 42.

**81-829.63 Repealed. Laws 1996, LB 43, § 54.****81-829.64 Emergency management organizations; enforce orders, rules, and regulations.**

Every emergency management organization established pursuant to the Emergency Management Act and the officers thereof shall execute and enforce such orders, rules, and regulations as may be made by the Governor under the act. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the Governor or under his or her authority.

**Source:** Laws 1951, c. 315, § 15, p. 1083; R.R.S.1943, § 81-829.30; Laws 1973, LB 494, § 29; Laws 1996, LB 43, § 43.

**81-829.65 Emergency operations; moving of equipment outside limits of local government; law enforcement personnel; powers; insurance.**

The governing body of each local government of this state shall take the necessary action to permit the movement of its emergency equipment and personnel, utility equipment and personnel, or such equipment and personnel as defined in the state, city, village, county, or interjurisdictional emergency operations plans outside the limits of such local government in order to render aid in the event of disaster, emergency, or civil defense emergency or in connection with any program of practice or training for such disaster, emergency, or civil defense emergency when such program is conducted or participated in by the Nebraska Emergency Management Agency or with any other related training program. If such personnel includes law enforcement personnel rendering aid in their law enforcement capacity, the law enforcement personnel shall have the power and authority to enforce the laws of this state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of their primary jurisdiction. Such movement may be to any point in this state or may be into any adjoining state when mutual aid arrangements have been entered into on behalf of this state with such other state as authorized by section 81-829.56. Each local government shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement made pursuant to this section.

**Source:** Laws 1957, c. 380, § 1, p. 1323; R.R.S.1943, § 81-829.32; Laws 1973, LB 494, § 30; Laws 1988, LB 961, § 1; Laws 1996, LB 43, § 44; Laws 1997, LB 546, § 1.

**81-829.66 Emergency operations; immunity from liability for licensors of shelter space.**

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice attack or disaster shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises, or loss of, or

damage to, the property of such person, at any time such real estate or premises are actually used for such purpose.

**Source:** Laws 1963, c. 499, § 1, p. 1591; R.R.S.1943, § 81-829.35; Laws 1973, LB 494, § 31.

**81-829.67 Storm spotter or emergency management worker; training, identification, and credentialing.**

(1) The Nebraska Emergency Management Agency shall develop training, identification, and credentialing standards for a storm spotter or emergency management worker.

(2) For purposes of this section, storm spotter means an individual who performs weather spotting services as an employee or a volunteer of a local emergency management organization and who has been credentialed by the Nebraska Emergency Management Agency under this section.

**Source:** Laws 2011, LB573, § 3.

**81-829.68 Repealed. Laws 1976, LB 847, § 2.**

**81-829.69 State of emergency; proclaimed by Governor; powers.**

Whenever the Governor has proclaimed a state of emergency pursuant to section 81-829.40, the Governor shall be authorized:

(1) To enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster, emergency, or civil defense emergency victims and to make such units available to any local government of the state;

(2) To assist any local government of the state which is the location of temporary housing for victims to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units; and

(3) Under such regulations as he or she shall prescribe, to temporarily suspend or modify for not to exceed sixty days any public health, safety, zoning, transportation, or other requirement of law or regulation within this state when by proclamation he or she deems such suspension or modification essential to provide temporary housing for victims.

**Source:** Laws 1975, LB 612, § 4; Laws 1996, LB 43, § 45.

**81-829.70 Temporary housing units; powers of local governments.**

Any local government of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster, emergency, or civil defense emergency victims and to enter into whatever arrangements are necessary to prepare or equip such sites to utilize the housing units.

**Source:** Laws 1975, LB 612, § 5; Laws 1996, LB 43, § 46.

**81-829.71 Major disaster; powers of Governor; apply for federal community disaster loans; cancellation of repayment; when.**

Whenever a major disaster has been declared to exist in this state, the Governor shall be authorized:

(1) Upon his determination that a local government of the state will suffer a substantial loss of tax and other revenue from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the local government, for a loan, and to receive and disburse the proceeds of any approved loan to any applicant local government subject to the terms of the loan. The Governor shall determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify such amount to the federal government; and

(2) To recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first three full fiscal years following the major disaster, the revenue of the local government is insufficient to meet its operating expenses, including additional disaster-related expenses of municipal operation.

**Source:** Laws 1975, LB 612, § 6.

**81-829.72 State of emergency; powers of Governor; Adjutant General; duty.**

(1) Whenever a state of emergency has been declared to exist in this state, the Governor is authorized, upon his or her determination that financial assistance is essential to meet related necessary expenses or serious needs of individuals or families adversely affected by a disaster, emergency, or civil defense emergency that may not be otherwise met from other means of assistance, to (a) accept a grant by the federal government to provide such financial assistance, subject to such terms and conditions as may be imposed upon the grant, and (b) provide assistance from funds appropriated to the Governor's Emergency Program to such individual assistance programs as may be required by terms and conditions of the federal program.

(2) The Adjutant General shall establish such individual assistance programs as shall be necessary to carry out the purposes of subsection (1) of this section.

**Source:** Laws 1975, LB 612, § 7; Laws 1996, LB 43, § 47; Laws 2003, LB 403, § 11.

**81-829.73 Misstatement concerning financial assistance; penalty.**

Any person who fraudulently or willfully makes a misstatement of fact in connection with an application for financial assistance under the Emergency Management Act shall, upon conviction of each offense, be guilty of a Class I misdemeanor.

**Source:** Laws 1975, LB 612, § 8; Laws 1996, LB 43, § 48; Laws 1996, LB 1044, § 860.

**81-829.74 Repealed. Laws 1996, LB 43, § 54.**

**81-829.75 References to prior act and agency; how construed.**

On and after July 19, 1996, all references in statutes, rules, regulations, ordinances, resolutions, and other documents to the Nebraska Disaster and Civil Defense Act of 1973 shall be construed to mean the Emergency Management Act and all references in statutes, rules, regulations, ordinances, resolutions, and other documents to the civil defense agency in the Adjutant General's

office shall be construed to mean the Nebraska Emergency Management Agency.

**Source:** Laws 1996, LB 43, § 49.

(d) OFFICE OF HOMELAND SECURITY

**81-830 Office of Homeland Security; created; Director of State Homeland Security; Homeland Security Policy Group; created; members; duties.**

(1) The Office of Homeland Security is created. The Governor shall appoint the Director of State Homeland Security who shall serve at the pleasure of the Governor.

(2) The purpose of the office is to ensure preparedness by the State of Nebraska in response to terrorist acts. The office shall coordinate efforts regarding domestic security issues with the United States Department of Homeland Security. The Director of State Homeland Security shall serve as the contact between the state and the United States Department of Homeland Security.

(3)(a) The Homeland Security Policy Group is created. The Director of State Homeland Security shall serve as chairperson of the policy group. The policy group is charged with assessing strategic alternatives and recommending broad courses of action for the development of comprehensive strategies. The Governor shall appoint other members of the policy group who shall serve at the will of the Governor. The Executive Board of the Legislative Council shall select one member of the Government, Military and Veterans Affairs Committee and one member of the Appropriations Committee of the Legislature to serve as ex officio nonvoting members of the policy group.

(b) The policy group shall report electronically by March 1 of each year to the executive board identifying federal funds sent to the state in support of its preparedness activities and indicating the use of federal funds received by the state for homeland security, including specific amounts allocated to any unit of state or local government and the use to which the unit shall apply the funds.

(c) The policy group shall not be subject to the Open Meetings Act or to sections 84-712 to 84-712.09.

**Source:** Laws 2006, LB 940, § 5; Laws 2012, LB782, § 173.

Cross References

Open Meetings Act, see section 84-1407.

**81-831 Repealed. Laws 1957, c. 381, § 4.**

**81-832 Repealed. Laws 1957, c. 381, § 4.**

**81-833 Repealed. Laws 1945, c. 233, § 18.**

**81-834 Repealed. Laws 1957, c. 381, § 4.**

**81-835 Repealed. Laws 1957, c. 381, § 4.**

**81-836 Repealed. Laws 1957, c. 381, § 4.**

**81-837 Repealed. Laws 1957, c. 381, § 4.**

**81-838 Repealed. Laws 1957, c. 381, § 4.**

(e) BOARD OF EXAMINERS FOR PROFESSIONAL  
ENGINEERS AND ARCHITECTS

- 81-839 Repealed. Laws 1997, LB 622, § 137.
- 81-840 Repealed. Laws 1997, LB 622, § 137.
- 81-841 Repealed. Laws 1997, LB 622, § 137.
- 81-842 Repealed. Laws 1997, LB 622, § 137.
- 81-843 Repealed. Laws 1997, LB 622, § 137.
- 81-844 Repealed. Laws 1997, LB 622, § 137.
- 81-845 Repealed. Laws 1997, LB 622, § 137.
- 81-846 Repealed. Laws 1997, LB 622, § 137.
- 81-846.01 Repealed. Laws 1997, LB 622, § 137.
- 81-847 Repealed. Laws 1997, LB 622, § 137.
- 81-848 Repealed. Laws 1997, LB 622, § 137.
- 81-849 Repealed. Laws 1997, LB 622, § 137.
- 81-850 Repealed. Laws 1997, LB 622, § 137.
- 81-851 Repealed. Laws 1997, LB 622, § 137.
- 81-852 Repealed. Laws 1997, LB 622, § 137.
- 81-853 Repealed. Laws 1997, LB 622, § 137.
- 81-854 Repealed. Laws 1997, LB 622, § 137.
- 81-855 Repealed. Laws 1997, LB 622, § 137.
- 81-856 Repealed. Laws 1997, LB 622, § 137.

(f) SUNDRY CLAIMS BOARD

- 81-857 Transferred to section 81-8,220.
- 81-858 Transferred to section 81-8,236.
- 81-859 Transferred to section 81-8,237.
- 81-860 Transferred to section 81-8,238.
- 81-861 Transferred to section 81-8,239.

(g) REAL ESTATE COMMISSION

- 81-862 Repealed. Laws 1973, LB 68, § 49.
- 81-863 Repealed. Laws 1973, LB 68, § 49.
- 81-864 Repealed. Laws 1973, LB 68, § 49.

**81-865 Repealed. Laws 1973, LB 68, § 49.**

**81-866 Repealed. Laws 1973, LB 68, § 49.**

**81-867 Repealed. Laws 1973, LB 68, § 49.**

**81-868 Repealed. Laws 1973, LB 68, § 49.**

**81-869 Repealed. Laws 1973, LB 68, § 49.**

**81-870 Repealed. Laws 1973, LB 68, § 49.**

**81-871 Repealed. Laws 1973, LB 68, § 49.**

**81-872 Repealed. Laws 1973, LB 68, § 49.**

**81-873 Repealed. Laws 1973, LB 68, § 49.**

**81-874 Repealed. Laws 1973, LB 68, § 49.**

**81-875 Repealed. Laws 1973, LB 68, § 49.**

**81-875.01 Repealed. Laws 1973, LB 68, § 49.**

**81-875.02 Repealed. Laws 1973, LB 68, § 49.**

**81-875.03 Repealed. Laws 1973, LB 68, § 49.**

**81-876 Repealed. Laws 1973, LB 68, § 49.**

**81-877 Repealed. Laws 1973, LB 68, § 49.**

**81-877.01 Repealed. Laws 1973, LB 68, § 49.**

**81-878 Repealed. Laws 1973, LB 68, § 49.**

**81-879 Repealed. Laws 1973, LB 68, § 49.**

**81-880 Repealed. Laws 1973, LB 68, § 49.**

**81-881 Repealed. Laws 1973, LB 68, § 49.**

**81-882 Repealed. Laws 1973, LB 68, § 49.**

**81-883 Repealed. Laws 1973, LB 68, § 49.**

**81-884 Repealed. Laws 1973, LB 68, § 49.**

**81-884.01 Repealed. Laws 1973, LB 68, § 49.**

**81-884.02 Repealed. Laws 1973, LB 68, § 49.**

**81-884.03 Repealed. Laws 1959, c. 439, § 7.**

**81-885 Act, how cited.**

Sections 81-885 to 81-885.55 shall be known and may be cited as the Nebraska Real Estate License Act.

**Source:** Laws 2009, LB30, § 1; Laws 2010, LB931, § 26.

**81-885.01 Terms, defined.**

For purposes of the Nebraska Real Estate License Act, unless the context otherwise requires:

(1) Real estate means and includes condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker means a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Designated broker means an individual holding a broker's license who has full authority to conduct the real estate activities of a real estate business. In a sole proprietorship, the owner, or broker identified by the owner, shall be the designated broker. In the event the owner identifies the designated broker, the owner shall file a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the sole proprietorship. In a partnership, limited liability company, or corporation, the partners, limited liability company members, or board of directors shall identify the designated broker for its real estate business by filing a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the partnership, limited liability company, or corporation. The designated broker shall also be responsible for supervising the real estate activities of any associate brokers or salespersons;

(5) Inactive broker means an associate broker whose license has been returned to the commission by the licensee's broker, a broker who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker or have the license issued as an individual broker, or a broker whose license has been placed on inactive status under statute, rule, or regulation;

(6) Salesperson means any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

(7) Inactive salesperson means a salesperson whose license has been returned to the commission by the licensee's broker, a salesperson who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker, or a salesperson whose license has been placed on inactive status under statute, rule, or regulation;

(8) Person means and includes individuals, corporations, partnerships, and limited liability companies, except that when referring to a person licensed under the act, it means an individual;

(9) Subdivision or subdivided land means any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

(10) Subdivider means any person who causes land to be subdivided into a subdivision for himself, herself, or others or who undertakes to develop a subdivision but does not include a public agency or officer authorized by law to create subdivisions;

(11) Purchaser means a person who acquires or attempts to acquire or succeeds to an interest in land;

(12) Commission means the State Real Estate Commission;

(13) Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of (a) listing, purchase, or sale or (b) originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction;

(14) Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of (a) listing, purchase, or sale or (b) originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction;

(15) Distance education means courses in which instruction does not take place in a traditional classroom setting, but rather through other media by which instructor and student are separated by distance and sometimes by time;

(16) Regulatory jurisdiction means a state, district, or territory of the United States, a province of Canada or a foreign country, or a political subdivision of a foreign country, which has implemented and administers laws regulating the activities of a broker;

(17) Federal financial institution regulatory agency means (a) the Board of Governors of the Federal Reserve System, (b) the Federal Deposit Insurance Corporation, (c) the Office of the Comptroller of the Currency, (d) the Office of Thrift Supervision, (e) the National Credit Union Administration, or (f) the successors of any of those agencies; and

(18) Federally related transaction means a real-estate-related transaction that (a) requires the services of an appraiser and (b) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

**Source:** Laws 1973, LB 68, § 1; Laws 1979, LB 68, § 1; Laws 1983, LB 182, § 1; Laws 1990, LB 350, § 1; Laws 1991, LB 118, § 2; Laws 1993, LB 121, § 529; Laws 1999, LB 618, § 6; Laws 2002, LB 863, § 10; Laws 2007, LB26, § 1; Laws 2010, LB931, § 27.

One of the enumerated activities covered by section 76-2422(6) is the exchange of property, based on the plain language of subdivision (2) of this section. *McCully, Inc. v. Baccaro Ranch*, 279 Neb. 443, 778 N.W.2d 115 (2010).

Pursuant to the Nebraska Real Estate License Act, any person collecting a fee or commission on the sale of real estate must be a licensed real estate broker or salesperson unless they meet one

of the exceptions provided in the act. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

“Business brokers” are real estate brokers, as defined by this section, if the attempted sale or lease involves the transfer of any interest in real estate. *Ford v. American Medical International*, 228 Neb. 226, 422 N.W.2d 67 (1988).

**81-885.02 Broker, associate broker, real estate salesperson; license required; exemption.**

After September 2, 1973, it shall be unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or hold himself or herself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker, associate broker, or real estate salesperson within this state without first obtaining a license as such broker, associate broker, or salesperson, as provided in the Nebraska Real Estate License Act, unless he or she is exempted from obtaining a license under section 81-885.04.

**Source:** Laws 1973, LB 68, § 2; Laws 1983, LB 182, § 2; Laws 2009, LB30, § 2.

A promissory note given by a vendor to a real estate broker in payment for a commission is enforceable even if, at the time of

the sale, the broker was not properly licensed. *Peterson and Vogt v. Livingston*, 206 Neb. 753, 295 N.W.2d 106 (1980).

**81-885.03 Broker, associate broker, salesperson, defined; license required; cease and desist order; violation; fine; procedure.**

(1) Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any form of compensation or consideration, offers, attempts, or agrees to perform or performs any single act described in subdivision (2) of section 81-885.01, whether as a part of a transaction, or as an entire transaction, shall be deemed a broker, associate broker, or salesperson within the meaning of the Nebraska Real Estate License Act, and such action shall constitute sufficient contact with the state for the exercise of personal jurisdiction over such person in any action arising out of such action. Committing a single act described in such subdivision by a person required to be licensed under the Nebraska Real Estate License Act and not so licensed shall constitute a violation of the act for which the commission may impose sanctions pursuant to this section for the protection of the public health, safety, or welfare.

(2) Notwithstanding any other provision of the law to the contrary, the director may issue a cease and desist order against any person who violates this section by performing any action described in subsection (1) of this section without the appropriate license. Such order shall be final ten days after issuance unless the violator requests a hearing pursuant to section 81-885.25.

(3) If such person violates a cease and desist order issued pursuant to this section, he or she shall be subject to further proceedings before the commission. If, during such proceedings, the commission makes a finding of guilt, the commission may impose a fine not to exceed (a) one thousand dollars for each day that any action is performed without the appropriate license following the issuance of the order or (b) the amount of all money earned as commission by the violator, whichever is greater. Judgments for the collection of any fine imposed under this section may be filed in the district court of any county in this state.

(4) Notice and hearing requirements under this section shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1973, LB 68, § 3; Laws 1983, LB 182, § 3; Laws 2002, LB 863, § 11; Laws 2010, LB691, § 1.

**Cross References**

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

**81-885.04 Act; exceptions.**

Except as to the requirements with respect to the subdivision of land, the Nebraska Real Estate License Act shall not apply to:

(1) Any person, partnership, limited liability company, or corporation who as owner or lessor shall perform any of the acts described in subdivision (2) of section 81-885.01 with reference to property owned or leased by him, her, or it or to the regular employees thereof, with respect to the property so owned or leased, when such acts are performed in the regular course of or as an incident to the management, sale, or other disposition of such property and the investment therein, except that such regular employees shall not perform any of the acts described in such subdivision in connection with a vocation of selling or leasing any real estate or the improvements thereon;

(2) An attorney in fact under a duly executed power of attorney to convey real estate from the owner or lessor or the services rendered by any attorney at law in the performance of his or her duty as such attorney at law;

(3) Any person acting as receiver, trustee in bankruptcy, personal representative, conservator, or guardian or while acting under a court order or under the authority of a will or of a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency;

(4) Any person acting as the resident manager of an apartment building, duplex, apartment complex, or court, when such resident manager resides on the premises and is engaged in the leasing of property in connection with his or her employment, or any employee, parent, child, brother, or sister of the owner or any employee of a licensed broker who manages rental property for the owner of such property;

(5) Any officer or employee of a federal agency in the conduct of his or her official duties;

(6) Any officer or employee of the state government or any political subdivision thereof performing his or her official duties for real estate tax purposes or performing his or her official duties related to the acquisition of any interest in real property when the interest is being acquired for a public purpose;

(7) Any person or any employee thereof who renders an estimate or opinion of value of real estate or any interest therein when such estimate or opinion of value is for the purpose of real estate taxation; or

(8) Any person who, for himself or herself or for others, purchases or sells oil, gas, or mineral leases or performs any activities related to the purchase or sale of such leases.

**Source:** Laws 1973, LB 68, § 4; Laws 1981, LB 185, § 1; Laws 1983, LB 66, § 1; Laws 1983, LB 182, § 4; Laws 1990, LB 350, § 2; Laws 1993, LB 121, § 530.

The exception provided by subsection (2) of this section is limited to those instances where an attorney is acting within the scope of his duties as an attorney. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

### **81-885.05 Railroads; public utilities; applicability of act.**

The Nebraska Real Estate License Act shall not apply to railroads and other public utilities regulated by the State of Nebraska, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subdivision (2) of section 81-885.01 is in connection with the sale, purchase, lease, or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

**Source:** Laws 1973, LB 68, § 5; Laws 1983, LB 182, § 5; Laws 2009, LB30, § 3.

### **81-885.06 Action for recovery of compensation; prohibited, except to licensed brokers, associate brokers, or salespersons.**

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the Nebraska Real Estate License Act to other than licensed brokers, licensed associate brokers, or licensed salespersons. A licensed broker may bring an action in the name of a partnership, limited liability company, or corporation if the broker operates under any of such business organizations.

**Source:** Laws 1973, LB 68, § 6; Laws 1978, LB 361, § 2; Laws 1983, LB 182, § 6; Laws 1993, LB 121, § 531.

Under the current statute, a licensed broker may bring an action under this section even if the partnership or corporation under which he operates is not licensed. Under the previous statute, section 81-885.16, R.R.S.1943, Reissue of 1976, such an action would be barred. Peterson and Vogt v. Livingston, 206 Neb. 753, 295 N.W.2d 106 (1980).

### **81-885.07 State Real Estate Commission; created; members; appointment; qualifications; compensation; director; rules and regulations; conduct real estate institutes and seminars; fees.**

(1) There is hereby created the State Real Estate Commission which shall consist of the Secretary of State, who shall be chairperson of the commission, and six members appointed by the Governor. Three of the members of the commission appointed by the Governor shall be active and licensed real estate brokers who have engaged in the real estate business as brokers or associate brokers for not less than five years, which members shall be appointed by the Governor, one from each of the three congressional districts as the districts were constituted on January 1, 2006. The remaining members shall be appointed at large, one of whom shall be representative of the public, one of whom shall be a licensed real estate salesperson who has engaged in the real estate business as a salesperson for not less than three years, and one of whom shall be an active and licensed real estate broker who has engaged in the real estate business as a broker or associate broker for not less than five years. The member representing the former congressional district 1 on July 14, 2006, shall represent congressional district 1 for the balance of his or her term. The member representing the former congressional district 2 on July 14, 2006, shall represent congressional district 2 for the balance of his or her term. The member representing the former congressional district 3 on July 14, 2006, shall become an at-large member for the balance of his or her term. The member

representing the former congressional district 4 on July 14, 2006, shall represent congressional district 3 for the balance of his or her term.

(2) At the expiration of the term of any member of the commission, the Governor shall appoint a successor for a term of six years. Any appointed member shall be limited to one six-year term, in addition to any partial term served. In the event of a vacancy on the commission, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. In the absence of the chairperson, the senior member of the commission in point of service present shall serve as presiding officer. Not less than four members of the commission must be present at any official meeting of the commission. The action of the majority of the members of the commission shall be deemed the action of the commission. No appointed person may act as a member of the commission while holding any other elective or appointive state or federal office.

(3) Each member of the commission shall receive as compensation for each day actually spent on official duties at scheduled meetings the sum of one hundred dollars and actual and necessary expenses incurred in the performance of his or her official duties.

(4) The commission shall employ a director who shall keep a record of all the proceedings, transactions, communications, and official acts of the commission, be custodian of all the records of the commission, and perform such other duties as the commission may require. The director shall call a meeting of the commission at his or her discretion or upon the direction of the chairperson or upon a written request of two or more members of the commission. The commission may employ such other employees as may be necessary to properly carry out the Nebraska Real Estate License Act, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the act. The office of the commission shall be maintained in Lincoln and all files, records, and property of the commission shall remain in such office. Neither the director nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(5) The commission may adopt and promulgate rules and regulations relating to the administration of but not inconsistent with the act.

(6) The commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the necessary expenses in connection therewith, which institutes or seminars shall be open to all licensees.

(7) The commission may charge reasonable fees for services it renders, not to exceed the actual costs thereof, except as otherwise provided in the act. The fees established by the commission pursuant to the act shall be established at the level necessary to meet expenditures of the commission as approved by the Legislature and to provide a sufficient cash fund balance.

**Source:** Laws 1973, LB 68, § 7; Laws 1978, LB 361, § 3; Laws 1983, LB 182, § 7; Laws 1990, LB 350, § 3; Laws 1991, LB 204, § 1; Laws 2006, LB 819, § 1.

**81-885.08 Seal; adopt; use.**

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words State Real Estate Commission, State of Nebraska

and such other device as the commission may desire included thereon, by which the acts of the commission shall be authenticated. Copies of all records and papers in the office of the commission, certified by the signature of the director and the seal of the commission, shall be received in evidence in all cases equally and with like effect as the originals.

**Source:** Laws 1973, LB 68, § 8.

**81-885.09 Attorney General; opinions on questions of law; act as attorney; fees and expenses; paid from State Real Estate Commission's Fund.**

The Attorney General shall render to the State Real Estate Commission opinions on all questions of law relating to the interpretation of the Nebraska Real Estate License Act or arising in the administration thereof and shall act as attorney for the commission in all actions and proceedings brought by or against it under or pursuant to the act. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the State Real Estate Commission's Fund.

**Source:** Laws 1973, LB 68, § 9; Laws 1983, LB 182, § 8; Laws 2009, LB30, § 4.

**81-885.10 Commission; powers; licensing; sanctions; consent decrees; civil fine.**

The commission shall have the full power to regulate the issuance of licenses and the activities of licensees and may impose sanctions pursuant to this section for the protection of the public health, safety, or welfare. The commission may revoke or suspend licenses issued under the Nebraska Real Estate License Act, censure licensees, enter into consent decrees, and issue cease and desist orders to violators of section 81-885.03. The commission may, alone or in combination with such disciplinary actions, impose a civil fine on a licensee for each violation alleged in a complaint for which the commission has made a finding of guilt, except that the total fine for such violations shall not exceed two thousand five hundred dollars per complaint. The commission may also impose a civil fine on violators of section 81-885.03 subject to the limits in such section.

The commission shall retain its powers under this section with respect to the actions of a licensee, whether or not he or she continues to be licensed under the act.

**Source:** Laws 1973, LB 68, § 10; Laws 1983, LB 182, § 9; Laws 2009, LB30, § 5; Laws 2010, LB691, § 2.

**81-885.11 Broker or salesperson; application for license; contents; expiration.**

(1) Any person desiring to act as a real estate broker or real estate salesperson shall file an application for a license with the commission. The application shall be in such form and detail as the commission prescribes, setting forth the following:

(a) The name and address of the applicant and, when applicable, the name under which he or she intends to conduct business; if the applicant will be conducting business through a partnership, the name and residence address of each member thereof, the name of the partnership's designated broker, and the

name under which the partnership business is to be conducted; if the applicant will be conducting business through a limited liability company, the name and address of each of its members, the name of the company's designated broker, and the name under which the business will be conducted; if the applicant will be conducting business through a corporation, the name and address of each of its principal officers, the name of the corporation's designated broker, and the name under which the business will be conducted; and if the applicant is an individual, the applicant's social security number;

(b) The place or places, including the city or village with the street and street number, if any, where the business is to be conducted; and

(c) Such other information as the commission requires.

(2) An application for a broker's or salesperson's license shall expire one year after date of receipt in the commission office.

**Source:** Laws 1973, LB 68, § 11; Laws 1978, LB 361, § 4; Laws 1983, LB 182, § 10; Laws 1990, LB 350, § 4; Laws 1993, LB 121, § 532; Laws 1997, LB 752, § 219; Laws 2002, LB 863, § 12; Laws 2014, LB687, § 1.

Effective date July 18, 2014.

#### **81-885.12 License; when granted.**

(1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of broker or salesperson in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be granted to an applicant who will be conducting business through a corporation, partnership, or limited liability company unless any stockholder, partner, or member having a controlling interest therein, if any, bears a good reputation for honesty, trustworthiness, and integrity.

(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction may in itself be sufficient ground for refusal of a license.

(3) The commission may in its discretion deny a license to any person who has engaged in the real estate business without a license.

(4) When an applicant has made a false statement of material fact on an application, such false statement may in itself be sufficient ground for refusal of a license.

(5) Grounds for suspension or revocation of a license, as provided for by the Nebraska Real Estate License Act, or the previous revocation of a real estate license shall also be grounds for refusal to grant a license.

**Source:** Laws 1973, LB 68, § 12; Laws 1978, LB 361, § 5; Laws 1983, LB 182, § 11; Laws 1990, LB 350, § 5; Laws 1993, LB 121, § 533; Laws 2002, LB 863, § 13.

A real estate broker's license may be suspended or revoked for misconduct occurring in a real estate transaction whether the broker is acting for himself or for others. *Wright v. State ex rel. State Real Estate Comm.*, 208 Neb. 467, 304 N.W.2d 39 (1981).

**81-885.13 License; conditions for issuance; enumerated; examination; fingerprinting; criminal history record information check; courses of study.**

(1) No broker's or salesperson's license shall be issued to any person who has not attained the age of nineteen years. No broker's or salesperson's license shall be issued to any person who is not a high school graduate or the holder of a certificate of high school equivalency.

(2) Each applicant for a salesperson's license shall furnish evidence that he or she has completed two courses in real estate subjects, approved by the commission, composed of not less than sixty class hours of study or, in lieu thereof, courses delivered in a distance education format approved by the commission.

(3) Each applicant for a broker's license shall either (a) have first served actively for two years as a licensed salesperson or broker and shall furnish evidence of completion of sixty class hours in addition to the hours required by subsection (2) of this section in a course of study approved by the commission or, in lieu thereof, courses delivered in a distance education format approved by the commission, or (b) furnish a certificate that he or she has passed a course of at least eighteen credit hours in subjects related to real estate at an accredited university or college, or completed six courses in real estate subjects composed of not less than one hundred eighty class hours in a course of study approved by the commission or, in lieu thereof, courses delivered in a distance education format approved by the commission.

(4) Each applicant for a broker's license must pass a written examination covering generally the matters confronting real estate brokers, and each applicant for a salesperson's license must pass a written examination covering generally the matters confronting real estate salespersons. Such examination may be taken before the commission or any person designated by the commission. Failure to pass the examination shall be grounds for denial of a license without further hearing. Within thirty days after passing the examination the applicant must complete all requirements necessary for the issuance of a license. The commission may prepare and distribute to licensees under the Nebraska Real Estate License Act informational material deemed of assistance in the conduct of their business.

(5) An applicant for an original broker's or salesperson's license 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. After filing application for a license, each applicant shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The applicant shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The applicant shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The applicant shall authorize release of the national criminal history record check to the commission.

(6) Courses of study, referred to in subsections (2) and (3) of this section, shall include courses offered by private proprietary real estate schools when such courses are prescribed by the commission and are taught by instructors approved by the commission. The commission shall monitor schools offering

approved real estate courses and for good cause shall have authority to suspend or withdraw approval of such courses or instructors.

**Source:** Laws 1973, LB 68, § 13; Laws 1973, LB 580, § 1; Laws 1978, LB 361, § 6; Laws 1980, LB 936, § 1; Laws 1983, LB 182, § 12; Laws 2002, LB 863, § 14; Laws 2003, LB 60, § 1; Laws 2014, LB687, § 2.

Effective date July 18, 2014.

**81-885.14 Fees; license; renewal; procedure.**

(1) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of the Nebraska Real Estate License Act, the commission shall, at the time an application is submitted, collect from an applicant for each broker's or salesperson's examination a fee to be established by the commission of not more than two hundred fifty dollars and an application fee of not more than two hundred fifty dollars. The commission shall also collect a reexamination fee to be established by the commission of not more than two hundred fifty dollars for each reexamination. The commission may direct an applicant to pay the examination or reexamination fee to a third party who has contracted with the commission to administer the examination. Prior to the issuance of an original license, each applicant who has passed the examination required by section 81-885.13 or who has received a license under section 81-885.17 shall pay a license fee to be established by the commission. The license fee established by the commission shall not exceed the following amounts: For a broker's license, not more than two hundred fifty dollars; and for a salesperson's license, not more than two hundred dollars.

(2) After the original issuance of a license, a renewal application and a renewal fee to be established by the commission of not more than five hundred dollars for each broker, and not more than four hundred dollars for each salesperson, shall be due and payable on or before November 30 of each renewal year. A broker or salesperson who: (a) Is required to submit evidence of completion of continuing education pursuant to section 81-885.51 on or before November 30, 2011, shall renew his or her license on or before such date for two years; (b) is not required to submit evidence of completion of continuing education until November 30, 2012, shall renew his or her license on or before November 30, 2011, for one year and shall renew his or her license on or before November 30, 2012, for two years; or (c) receives his or her original license on or after January 1, 2011, shall renew his or her license on or before the immediately following November 30 for two years. Each subsequent renewal under subdivisions (a), (b), and (c) of this subsection shall be for a two-year period and shall be due on or before November 30 of each renewal year. Failure to remit renewal fees when due shall automatically cancel such license on December 31 of the renewal year, but otherwise the license shall remain in full force and effect continuously from the date of issuance unless suspended or revoked by the commission for just cause. Any licensee who fails to file an application for the renewal of any license and pay the renewal fee as provided in this section may file a late renewal application and shall pay, in addition to the renewal fee, an amount to be established by the commission of not more than twenty-five dollars for each month or fraction thereof beginning with the first day of December if such late application is filed before July 1 of the ensuing year.

(3) Any check presented to the commission as a fee for either an original or renewal license or for examination for license which is returned to the State Treasurer unpaid or any electronic payment presented to the commission as a fee for either an original or renewal license or for examination for license that is not accepted against the commission shall be cause for revocation or denial of license.

(4) An inactive broker or salesperson may renew his or her license by submitting an application before December 1 prior to the ensuing year. Such broker or salesperson shall submit the renewal fee together with the completed renewal application on which he or she has noted his or her present inactive status. Any broker or salesperson whose license has been renewed on such inactive status shall not be permitted to engage in the real estate business until such time as he or she fulfills the requirements for active status. Any license which has been inactive for a continuous period of more than three years shall be reinstated only if the licensee has met the examination requirement of an original applicant.

**Source:** Laws 1973, LB 68, § 14; Laws 1976, LB 899, § 1; Laws 1978, LB 361, § 7; Laws 1980, LB 936, § 2; Laws 1983, LB 182, § 13; Laws 1990, LB 350, § 6; Laws 1991, LB 118, § 3; Laws 1991, LB 204, § 2; Laws 2009, LB11, § 1; Laws 2011, LB23, § 1.

**81-885.15 Fees; deposited in State Real Estate Commission's Fund; investment.**

All fees collected under the Nebraska Real Estate License Act shall be deposited in the state treasury in a fund to be known as the State Real Estate Commission's Fund. The commission may use such part of the money in this fund as is necessary to be used by it in the administration and enforcement of the act. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The State Real Estate Commission's Fund shall be paid out only upon proper vouchers and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer, as provided by law. The expenses of conducting the office must always be kept within the income collected and deposited with the State Treasurer by such commission and such office, and the expense thereof shall not be supported or paid from any other state fund. Any money in the State Real Estate Commission's 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 1973, LB 68, § 15; Laws 1983, LB 182, § 14; Laws 2009, LB30, § 6; Laws 2009, First Spec. Sess., LB3, § 68.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-885.16 Real Property Appraiser Act; applicability; broker's price opinion or comparative market analysis; requirements.**

(1) The Real Property Appraiser Act shall not apply to a person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal.

(2) No compensation, fee, or other consideration shall be charged for a broker's price opinion or comparative market analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing, is signed by the preparer, includes the date on which it was prepared, and contains or has attached thereto the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property or for lending purposes in a transaction other than a federally related transaction. This opinion or analysis is not governed by the Real Property Appraiser Act.

(3) A broker's price opinion or comparative market analysis prepared for an existing or potential lienholder originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction may not be used as the sole basis to determine the value of the real estate for the purpose of originating a loan secured by such real estate, and the person giving the opinion or analysis must be engaged directly by the lienholder or its agent. Such person shall have no duty to inquire as to any other basis used to determine such value.

**Source:** Laws 2010, LB931, § 28.

Cross References

Real Property Appraiser Act, see section 76-2201.

**81-885.17 Nonresident broker's license; nonresident salesperson's license; issuance; requirements; fingerprinting; criminal history record information check; reciprocal agreements.**

(1)(a) A nonresident of this state who is actively engaged in the real estate business, who maintains a place of business in his or her resident regulatory jurisdiction, and who has been duly licensed in that regulatory jurisdiction to conduct such business in that regulatory jurisdiction may, in the discretion of the commission, be issued a nonresident broker's license.

(b) A nonresident salesperson employed by a broker holding a nonresident broker's license may, in the discretion of the commission, be issued a nonresident salesperson's license under such nonresident broker.

(c) A nonresident who becomes a resident of the State of Nebraska and who holds a broker's or salesperson's license in his or her prior resident regulatory jurisdiction shall be issued a resident broker's or salesperson's license upon filing an application, paying the applicable license fee, complying with the criminal history record information check under subsection (4) of this section, filing the affidavit required by subsection (7) of this section, and providing to the commission adequate proof of completion of a three-hour class approved by the commission specific to the Nebraska Real Estate License Act and sections 76-2401 to 76-2430.

(2) Obtaining a nonresident broker's license shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the licensee in any action arising out of the licensee's activity in this state.

(3) Prior to the issuance of any license to any nonresident, he or she shall file with the commission a duly certified copy of the license issued to the applicant

by the resident regulatory jurisdiction, pay to the commission the nonresident license fee as provided in section 81-885.14 for the obtaining of a broker's or salesperson's license, and provide to the commission adequate proof of completion of a three-hour class approved by the commission specific to the Nebraska Real Estate License Act and sections 76-2401 to 76-2430.

(4) An applicant for an original nonresident broker's or salesperson's license 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. After filing application for a license, each applicant shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The applicant shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The applicant shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The applicant shall authorize release of the national criminal history record check to the commission.

(5) Nothing in this section shall preclude the commission from entering into reciprocal agreements with other regulatory jurisdictions when such agreements are necessary to provide Nebraska residents authority to secure licenses in other regulatory jurisdictions.

(6) Nonresident licenses granted as provided in this section shall remain in force for only as long as the requirements of issuing and maintaining a license are met unless (a) suspended or revoked by the commission for just cause or (b) lapsed for failure to pay the annual renewal fee.

(7) Prior to the issuance of any license to a nonresident applicant, an affidavit shall be filed by the applicant with the commission certifying that the applicant has reviewed and is familiar with the Nebraska Real Estate License Act and the rules and regulations of the commission and agrees to be bound by the act, rules, and regulations.

**Source:** Laws 1973, LB 68, § 17; Laws 1980, LB 936, § 3; Laws 1983, LB 182, § 15; Laws 1983, LB 447, § 95; Laws 1990, LB 350, § 7; Laws 2002, LB 863, § 15; Laws 2003, LB 60, § 2; Laws 2006, LB 819, § 2; Laws 2008, LB715, § 1; Laws 2011, LB25, § 16; Laws 2014, LB687, § 3.  
Effective date July 18, 2014.

**81-885.18 Application; refusal; hearing; decision.**

(1) If the director of the commission, after an application in proper form has been filed with the commission, accompanied by the proper fee, refuses to accept the application, the director shall give notice of the fact to the applicant within twenty days after his or her ruling, order, or decision.

(2) Upon written request from the applicant, filed within thirty days after receipt of such notice by the applicant, the commission shall set the matter down for a hearing to be conducted within ninety days after receipt of the applicant's request.

(3) The hearing shall be at such time and place as the commission shall prescribe. At least twenty days prior to the date set for the hearing the commission shall notify the applicant and other persons protesting, and the notice shall set forth the reasons why the director refused to accept the

application. Such written notice of hearing may be served by delivery personally to the applicant and protesters or by mailing the same by registered or certified mail to the last-known business address of the applicant and protesters.

(4) At the hearing the applicant shall be entitled to examine, either in person or by counsel, any and all persons protesting against him or her, as well as all other witnesses whose testimony is relied upon to substantiate any protest or denial of the application. The applicant shall be entitled to present such evidence, written and oral, as he or she may see fit and as may be pertinent to the inquiry.

(5) At the hearing all witnesses shall be duly sworn by the chairperson of the commission, or any member thereof, and stenographic notes of the proceedings shall be taken. Any party to the proceedings desiring a copy of the stenographic notes shall be furnished with a copy upon the payment to the commission of such fee as the commission shall prescribe, if the request is made within ten days after the date of any order issued by the commission.

(6) The commission shall render a decision on any application within sixty days after the final hearing on such application and shall immediately notify the parties to the proceedings, in writing, of its ruling, order, or decision.

**Source:** Laws 1973, LB 68, § 18; Laws 1975, LB 354, § 1; Laws 1983, LB 182, § 16; Laws 1990, LB 350, § 8; Laws 2002, LB 863, § 16.

#### **81-885.19 License; form; broker's branch office; license; fee.**

The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each salesperson and associate broker shall be delivered or mailed to the broker by whom the salesperson or associate broker is employed and shall be kept in the custody and control of such broker. It is the duty of each broker to display his or her own license and those of his or her associate brokers and salespersons conspicuously in his or her place of business. If a broker maintains more than one place of business within the state, a branch office license shall be issued to such broker for each branch office so maintained by him or her upon the payment of an annual fee to be established by the commission of not more than fifty dollars and the branch office license shall be displayed conspicuously in each branch office. The broker or an associate broker shall be the manager of a branch office.

**Source:** Laws 1973, LB 68, § 19; Laws 1983, LB 182, § 17; Laws 1990, LB 350, § 9; Laws 1991, LB 204, § 3; Laws 2002, LB 863, § 17; Laws 2009, LB29, § 1; Laws 2011, LB23, § 2.

#### **81-885.20 Broker, salesperson; change in place of business or status; notify commission; fee.**

(1) Should the broker change his or her place of business, he or she shall forthwith notify the commission in writing of such change.

(2) When a salesperson or associate broker leaves the employ of a broker, the employing broker shall immediately forward the license of such employee to the commission and shall furnish such information regarding the termination of employment as the commission may require.

(3) When a salesperson or associate broker transfers from one employing broker to another, when an associate broker changes his or her status from associate broker to that of broker, or when a broker changes his or her status to that of associate broker, a transfer fee to be established by the commission of not more than fifty dollars shall be paid to the commission.

**Source:** Laws 1973, LB 68, § 20; Laws 1983, LB 182, § 18; Laws 1990, LB 350, § 10; Laws 1991, LB 204, § 4; Laws 2006, LB 819, § 3; Laws 2011, LB23, § 3.

**81-885.21 Broker; separate trust account; notify commission where maintained; examination by representative of commission; broker entitled to money; when.**

(1) Each broker other than an inactive broker shall maintain in a bank, savings bank, building and loan association, or savings and loan association a separate, insured checking account in this state in his or her name or the name under which he or she does business which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him or her, his or her associate brokers, or his or her salespersons on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing. Until July 1, 2017, such trust account may be either an interest-bearing or a non-interest-bearing account. Any broker using an interest-bearing account shall comply with subsection (7) of this section. On and after July 1, 2017, such trust account shall be a non-interest-bearing account.

(2) Each broker shall notify the commission of the name of the bank, savings bank, building and loan association, or savings and loan association in which the trust account is maintained and also the name of the account on forms provided therefor.

(3) Each broker shall authorize the commission to examine such trust account by a duly authorized representative of the commission. Such examination shall be made annually or at such time as the commission may direct.

(4) A broker may maintain more than one trust account in his or her name or the name under which he or she does business if the commission is advised of such account as required in subsection (2) of this section.

(5) In the event a branch office maintains a separate trust account, a separate bookkeeping system shall be maintained in the branch office.

(6) A broker shall not be entitled to any part of the earnest money or other money paid to him or her or the entity under which he or she does business in connection with any real estate transaction as part or all of his or her compensation or consideration until the transaction has been consummated or terminated.

(7) If the trust account is an interest-bearing account, as authorized under subsection (1) of this section, the interest from the interest-bearing account may be distributed or otherwise accrue only to nonprofit organizations that promote housing in Nebraska and that are exempt from the payment of federal income taxes. A broker may use an interest-bearing account for a transaction only if the use of such account for purposes of promoting housing in Nebraska has been approved by all parties whose money will be deposited into such account. The

commission may further define policies and procedures for the processing of and distributions from interest-bearing trust accounts by rule and regulation.

**Source:** Laws 1973, LB 68, § 21; Laws 1975, LB 354, § 2; Laws 1978, LB 361, § 8; Laws 1981, LB 238, § 1; Laws 1991, LB 118, § 4; Laws 2000, LB 932, § 52; Laws 2002, LB 863, § 18; Laws 2011, LB347, § 1; Laws 2013, LB72, § 1.

**81-885.22 Broker, failure to comply with separate bank accounts and trust account provisions; report to Attorney General; action by Attorney General; receiver.**

Whenever it shall appear to the commission from any examination or report provided by the laws of this state that a broker has failed to comply with the provisions of section 81-885.21, or if any broker shall refuse to submit his or her books, papers, and affairs to the inspection of any examiner, the commission shall have reason to conclude that the trust account of such broker is in an unsafe or unsound condition and the commission shall forthwith submit a complete report to the Attorney General of all information available to it. An action may be brought by the State of Nebraska to enjoin such broker from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through or by means of the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon him or her by the court.

**Source:** Laws 1973, LB 68, § 22; Laws 1978, LB 361, § 9; Laws 1983, LB 182, § 19.

**81-885.23 Attorney General; special counsel; appoint; fees allowed; taxed as costs.**

The Attorney General may appoint special counsel to prosecute the action as provided for in section 81-885.22, and all fees allowed to the receiver and to counsel so appointed shall be taxed as costs in such action as the court may direct.

**Source:** Laws 1973, LB 68, § 23.

**81-885.24 Commission; investigative powers; disciplinary powers; civil fine; violations of unfair trade practices.**

The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any broker, associate broker, salesperson, or subdivider, may censure the licensee or certificate holder, revoke or suspend any license or certificate issued under the Nebraska Real Estate License Act, or enter into consent orders, and, alone or in combination with such disciplinary actions, may impose a civil fine on a

licensee pursuant to section 81-885.10, whenever the license or certificate has been obtained by false or fraudulent representation or the licensee or certificate holder has been found guilty of any of the following unfair trade practices:

(1) Refusing because of religion, race, color, national origin, ethnic group, sex, familial status, or disability to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters;

(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into his or her possession belonging to others;

(4) Commingling the money or other property of his or her principals with his or her own;

(5) Failing to maintain and deposit in a separate trust account all money received by a broker acting in such capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing;

(6) Accepting, giving, or charging any form of undisclosed compensation, consideration, rebate, or direct profit on expenditures made for a principal;

(7) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge and consent of the employer;

(8) Accepting any form of compensation or consideration by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent;

(13) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract;

(15) Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion;

(16) Violating any provision of sections 76-2401 to 76-2430;

(17) Soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate;

(18) Providing any form of compensation or consideration to any person for performing the services of a broker, associate broker, or salesperson who has not first secured his or her license under the Nebraska Real Estate License Act unless such person is (a) a nonresident who is licensed in his or her resident regulatory jurisdiction or (b) a citizen and resident of a foreign country which does not license persons conducting the activities of a broker and such person provides reasonable written evidence to the Nebraska broker that he or she is a resident citizen of that foreign country, is not a resident of this country, and conducts the activities of a broker in that foreign country;

(19) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal;

(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(21) Failing by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller, failing to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, and failing to retain true copies of such statements in his or her files;

(22) Making any substantial misrepresentations;

(23) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker;

(25) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under the listing contract exists;

(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act;

(27) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of the Nebraska Real Estate License Act;

(28) Conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge by a broker or salesperson;

(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section; or

(30) Inducing or attempting to induce a person to transfer an interest in real property, whether or not for monetary gain, or discouraging another person from purchasing real property, by representing that (a) a change has occurred or will or may occur in the composition with respect to religion, race, color,

national origin, ethnic group, sex, familial status, or disability of the owners or occupants in the block, neighborhood, or area or (b) such change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area.

**Source:** Laws 1973, LB 68, § 24; Laws 1975, LB 354, § 3; Laws 1978, LB 361, § 10; Laws 1981, LB 238, § 2; Laws 1982, LB 403, § 1; Laws 1983, LB 182, § 20; Laws 1985, LB 109, § 1; Laws 1990, LB 350, § 11; Laws 2002, LB 863, § 19; Laws 2009, LB30, § 7; Laws 2011, LB25, § 17; Laws 2011, LB347, § 2.

The Real Estate Commission shall have the power to censure the licensee or certificate holder whenever the licensee or certificate holder has been found guilty of either of the following unfair trade practices: (1) failing to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and the seller, or (2) acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts. *Firmature v. Brannon*, 223 Neb. 123, 388 N.W.2d 119 (1986).

For the purposes of subsection (28) of this section regarding revocation or suspension of a real estate broker's license, incompetence means failure to meet requirements for a minimal level of acceptable conduct. *Weiner v. State ex rel. Real Estate Comm.*, 217 Neb. 372, 348 N.W.2d 879 (1984).

Subsection (28) of this section is not unconstitutionally vague. *Weiner v. State ex rel. Real Estate Comm.*, 217 Neb. 372, 348 N.W.2d 879 (1984).

Statute declared to be unambiguous and requiring a salesperson to turn over to his broker any funds entrusted to that salesperson. *Weiner v. State ex rel. Real Estate Comm.*, 214 Neb. 404, 333 N.W.2d 915 (1983).

Evidence supported commission's suspension of appellant's real estate license for six months after hearing on complaint that appellant engaged in an unfair trade practice as defined by this section. *Aboud v. State ex rel. State Real Estate Comm.*, 210 Neb. 676, 316 N.W.2d 608 (1982).

A real estate broker's license may be suspended or revoked for misconduct occurring in a real estate transaction whether the broker is acting for himself or for others. *Wright v. State ex rel. State Real Estate Comm.*, 208 Neb. 467, 304 N.W.2d 39 (1981).

Licensed sales agent's violation of a commission regulation held an action demonstrating unworthiness justifying suspension. *Haller v. State ex rel. State Real Estate Commission*, 198 Neb. 437, 253 N.W.2d 280 (1977).

A real estate broker's actions clearly demonstrated unworthiness under this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Double jeopardy was not applicable to a real estate broker's discipline under this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

### **81-885.25 Censure, revoke, or suspend license; impose civil fine; cease and desist order; hearing; notice; contents.**

(1) Before the commission censures a licensee, imposes a civil fine, revokes or suspends a license, or issues a cease and desist order, the commission shall send to the licensee or violator a copy of the complaint by certified mail which contains the charges against the licensee or violator and, unless the licensee or violator waives the right to a hearing and has executed a consent order, give the licensee or violator a hearing on the matter.

(2) The licensee or violator shall have full authority to be heard in person or by counsel before the commission in reference to such charges. The commission shall, at least twenty days prior to the date set for hearing, notify the licensee or violator in writing of the date and place of the hearing. Such notice may be served by delivering it personally to the licensee or violator or by sending it by either registered or certified mail to the last-known business address of such licensee or any known address of the violator. If the licensee is an associate broker or a salesperson, the commission shall also notify the broker employing the licensee by mailing a copy of such notice to the broker's last-known business address.

**Source:** Laws 1973, LB 68, § 25; Laws 1983, LB 182, § 21; Laws 1984, LB 480, § 2; Laws 1990, LB 350, § 12; Laws 2009, LB30, § 8; Laws 2010, LB691, § 3.

### **81-885.26 Answer to complaint; when.**

Within twenty days from the time of service of the complaint and notice the licensee may file his or her sworn answer thereto which shall contain all defenses which he or she intends to assert. No motions or other pleadings shall be authorized.

**Source:** Laws 1973, LB 68, § 26; Laws 1981, LB 238, § 3; Laws 1990, LB 350, § 13.

**81-885.27 Hearing; witnesses; subpoenas; depositions.**

In the preparation and conducting of the hearing, the director shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers, books, or documents. The chairperson or any member of the commission may administer oaths, examine the witnesses, and take any evidence he or she deems pertinent to the determination of the charges. Any witness subpoenaed shall be entitled to the same fees as prescribed by law in judicial proceedings in the district courts of this state in civil actions and mileage at the rate provided in section 81-1176 for state employees, but the payment of such fees and mileage shall be paid out of and kept within the limits of the funds created from license fees. The party against whom such charges may be filed shall have the right to obtain from the director a subpoena for any witnesses which he or she may desire at such hearing. Depositions may also be taken and used as in civil cases in the district courts.

**Source:** Laws 1973, LB 68, § 27; Laws 1981, LB 204, § 179.

**81-885.28 Refusal of witness to attend or testify; proceedings in district court.**

(1) If any witness so subpoenaed shall refuse to attend the taking of a deposition or the hearing, or if attending shall refuse to testify, the commission may apply to the district court of the county in which the deposition is to be taken or in which the hearing is to be held for an order compelling the attendance of the witness, the giving of testimony, and the production of books, papers, and documents.

(2) The application shall be by petition, setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books, papers, and documents;

(b) That the witness has been subpoenaed in the manner prescribed by section 81-885.27; and

(c) That the witness has failed and refused to attend or produce the papers required by subpoena before the commission, or officer taking the deposition in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him or her in the course of the hearing or deposition.

(3) The court, upon petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he or she has not attended, testified, or produced the books, papers, or documents before the commission. A certified copy of the order shall be served upon the witness.

(4) If at the show-cause hearing, it shall appear to the court that the subpoena was regularly issued by the director of the commission, the court shall thereupon enter an order that the witness appear before the commission

or the officer taking the deposition at the time and place fixed in the order and testify or produce the required books, papers, or documents, and upon failure to obey such order the witness shall be dealt with as for contempt of court.

**Source:** Laws 1973, LB 68, § 28; Laws 1983, LB 182, § 22.

**81-885.29 Findings and determination by commission; license revoked or suspended; when; censure; civil fine; stay of execution; probation.**

After the hearing the commission shall state in writing, officially signed by the chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission determines that the licensee has been guilty of any violation of the Nebraska Real Estate License Act or the rules and regulations of the commission or the violator has been guilty of a violation of section 81-885.03, the commission may revoke or suspend the license, enter an order censuring the licensee, or impose a civil fine on a licensee pursuant to section 81-885.10 or on a violator pursuant to section 81-885.03. The execution of a penalty of suspension may be stayed by the commission and the licensee may be placed on probation for the suspension period, after satisfactory completion of which his or her license shall be fully reinstated. Any violation of the act or the rules and regulations by the licensee during the period of probation shall cause the immediate execution of the suspension penalty.

**Source:** Laws 1973, LB 68, § 29; Laws 1975, LB 354, § 4; Laws 1983, LB 182, § 23; Laws 1990, LB 350, § 14; Laws 2002, LB 863, § 20; Laws 2009, LB30, § 9; Laws 2010, LB691, § 4.

**81-885.30 Appeal; procedure.**

An order of the commission which has become final may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1973, LB 68, § 30; Laws 1981, LB 238, § 4; Laws 1988, LB 352, § 169.

**Cross References**

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

Action by Real Estate Commission to suspend license is arbitrary and capricious where it is taken on findings of fact that do not represent a breach of conduct within the terms of the statute. Judicial review of a commission order issued before the

effective date of the 1981 amendment to this section is under the amendment, where district court acted on the appeal after the amendment took effect. *Hancock v. State ex rel. Real Estate Comm.*, 213 Neb. 807, 331 N.W.2d 526 (1983).

**81-885.31 Civil fines; distribution; collection procedure.**

(1) All civil fines collected pursuant to the Nebraska Real Estate License Act shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil fine imposed pursuant to the act which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be recovered by the Attorney General, along with reasonable attorney's fees and court costs, in a proper form of action in the name of the state in the district court of the county in which the violator resides. The commission shall consider such debt to be grounds for denial, refusal to renew, or refusal to reinstate a license under the act or grounds for additional disciplinary action by the commission.

**Source:** Laws 2009, LB30, § 10.

**81-885.32 Repealed. Laws 1978, LB 361, § 14.****81-885.33 Subdivision real estate; sale or offer to sell; requirements.**

It shall be unlawful for any person, partnership, limited liability company, or corporation to sell or offer for sale any real estate in a subdivision except by a broker and his or her employees duly licensed in this state.

**Source:** Laws 1973, LB 68, § 33; Laws 1983, LB 182, § 24; Laws 1993, LB 121, § 534; Laws 2002, LB 863, § 21.

**81-885.34 Subdivision real estate; sale; subdivision certificate; application; contents; fee.**

Prior to the time when such subdivision real estate is offered for sale, such person, partnership, limited liability company, or corporation shall make application for a subdivision certificate to the commission in writing on a form to be prescribed by the commission and approved by the Attorney General. Such application shall be accompanied by a filing fee of one hundred dollars plus twenty-five dollars for each one hundred lots or fraction thereof to be offered for sale. Such application shall contain the following information and supporting documents:

- (1) The name and address of the applicant and whether the applicant is a person, partnership, limited liability company, or corporation;
- (2) If the applicant is a partnership, the names and addresses of the individual members thereof;
- (3) If the applicant is a limited liability company, the names and addresses of the individual members thereof;
- (4) If the applicant is a corporation, the place of incorporation and the names and addresses of its officers and members of its board of directors;
- (5) The legal description and area of the real estate to be offered for sale, including maps and recorded plats thereof showing the area involved;
- (6) The name and address of the legal owner of the real estate to be offered for sale;
- (7) A certified, audited financial statement fully and fairly disclosing the current financial condition of the developer;
- (8) A statement of the condition of the title of the subdivided lands including encumbrances as of a specified date within thirty days of the application;
- (9) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrances upon the title and copies of the instruments creating the lien or encumbrances, if any, with dates as to recording, along with the documentary evidence that any mortgagee or trustee of a deed of trust has subordinated his or her interest in the real estate to the interest of a purchaser of the real estate;
- (10) A true statement of the terms and conditions on which it is intended to dispose of the real estate, together with copies of any contracts intended to be used, which contracts shall contain (a) a provision entitling the purchaser, if he or she has not seen the land, to an unconditional right of refund of all payments made under the contract if such right is exercised within fourteen days after inspecting the land and if inspection is made within a time provided in the contract which shall not be less than four months from the date of the contract

and (b) a provision granting to the purchaser an unconditional right to rescind the contract for a period of fourteen days if he or she has not inspected the land within the time provided in the contract for inspection;

(11) A statement of the zoning and other governmental regulations affecting the use of the land to be sold or offered for sale disclosing whether or not such regulations have been satisfied; and

(12) A copy of an offering statement which sets forth the material facts with respect to the land to be offered or sold.

After receiving the application, the commission may require such additional information concerning the real estate as it deems necessary.

**Source:** Laws 1973, LB 68, § 34; Laws 1978, LB 361, § 11; Laws 1983, LB 182, § 25; Laws 1993, LB 121, § 535; Laws 2002, LB 863, § 22.

**81-885.35 Subdivision real estate; investigation; expenses; certificate; conditions.**

(1) The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating such real estate and the proposed sale thereof in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses prior to incurring the same.

(2) No application shall be approved by the commission unless the subdivider offers satisfactory proof of his or her ability to provide promised public improvements such as but not limited to water, sewer, gas, and streets. Satisfactory proof shall be in the form of performance bonds or other security.

(3) Obtaining a certificate of registration shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such applicant in any action arising out of the applicant's activity in this state.

**Source:** Laws 1973, LB 68, § 35; Laws 1983, LB 447, § 96; Laws 1983, LB 182, § 26.

**81-885.36 Subdivision real estate; application for certificate; approval; fee; renewal.**

If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of fifty dollars plus ten dollars for each one hundred lots or fraction thereof computed on the number of lots in the original application shall be due and payable on or before January 1 of each year. Failure to remit annual fees when due shall automatically cancel such certificate, but otherwise such certificate shall remain in full force and effect if the commission determines from satisfactory investigation that such certificate should be renewed. Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission such information as may be requested by the commission. If an investigation is required, the cost of making the investigation shall be paid by the certificate holder.

**Source:** Laws 1973, LB 68, § 36.

**81-885.37 Subdivision real estate; instrument conveying an interest; recordable form; recording.**

Any instrument conveying an interest in the subdivided real estate shall be in recordable form and the subdivider or buyer may record such instrument in the county where the real estate is located and in the office where deeds are recorded.

**Source:** Laws 1973, LB 68, § 37.

**81-885.38 Subdivision real estate; representations that commission has inspected and approved; unlawful.**

No broker or salesperson shall in any manner refer to the commission or any member or employee thereof in selling, offering for sale, or advertising or otherwise promoting the sale, mortgage, or lease of any such real estate, nor make any representation whatsoever that such real estate has been inspected or approved or otherwise passed upon by the commission or any state official, department, or employee.

**Source:** Laws 1973, LB 68, § 38; Laws 1983, LB 182, § 27.

**81-885.39 Subdivision real estate; cease and desist orders.**

The director, with the consent of the commission, shall have the power to issue a cease and desist order upon determination that sections 81-885.33 to 81-885.38 have been or are about to be violated.

**Source:** Laws 1973, LB 68, § 39.

**81-885.40 Subdivision real estate; failure to comply with sections; contract void; repayment of money with interest.**

Failure on the part of any person, partnership, limited liability company, or corporation to comply with sections 81-885.33 to 81-885.39 shall render any contract (1) entered into in this state or (2) arising out of contacts between the purchaser and subdivider within this state void and unenforceable, and any money paid under such contract to the subdivider, together with interest at the rate of six percent per annum from date of such payment, may be recovered in an action at law brought in the county where the cause of action or some part thereof arose.

**Source:** Laws 1973, LB 68, § 40; Laws 1993, LB 121, § 536; Laws 2002, LB 863, § 23.

**81-885.41 Subdivision real estate; industrial or commercial properties.**

Sections 81-885.33 to 81-885.40 shall not apply to the sale or lease of lots in a subdivision for industrial or commercial properties.

**Source:** Laws 1973, LB 68, § 41.

**81-885.42 Subdivision real estate; sales of twenty-five or more lots.**

Sections 81-885.33 to 81-885.40 shall not apply to sale or lease of real estate not pursuant to a common promotional plan to offer or sell twenty-five or more lots in a subdivision.

**Source:** Laws 1973, LB 68, § 42.

**81-885.43 Violations; Attorney General; maintain action.**

Except as provided in subsection (2) of section 81-885.31, whenever, in the judgment of the commission, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Nebraska Real Estate License Act, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county in which such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with the act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

**Source:** Laws 1973, LB 68, § 43; Laws 1983, LB 182, § 28; Laws 2009, LB30, § 11.

**81-885.44 Complaint for violations of act.**

The commission by and through its director may prefer a complaint for violation of the Nebraska Real Estate License Act.

**Source:** Laws 1973, LB 68, § 44; Laws 1983, LB 182, § 29; Laws 2009, LB30, § 12.

**81-885.45 Acting without license or certificate; penalty.**

Any person or subdivider acting as a broker, salesperson, or subdivider without having first obtained the required license or subdivision certificate or while his or her license or subdivision certificate is under suspension shall be guilty of a Class II misdemeanor.

**Source:** Laws 1973, LB 68, § 45; Laws 1975, LB 354, § 5; Laws 1977, LB 39, § 296; Laws 1978, LB 361, § 12; Laws 1985, LB 109, § 2; Laws 2002, LB 863, § 24.

**81-885.46 License or certificate under prior law; renewal.**

Any real estate license or subdivision certificate issued prior to September 2, 1973, shall, for purposes of renewal, be considered to have been originally issued under the Nebraska Real Estate License Act.

**Source:** Laws 1973, LB 68, § 46; Laws 1983, LB 182, § 30; Laws 2009, LB30, § 13.

**81-885.47 Repealed. Laws 2009, LB 30, § 17.****81-885.48 Terms, how construed.**

Except for purposes of section 81-885.04, the terms employ, employed, employer, or employee as used in the Nebraska Real Estate License Act shall not necessarily be construed to imply an employer and employee relationship. The use of such terms shall not prohibit the establishment of any independent contract or other relationship between a business and an individual, between individuals, or between businesses, including an employer and employee relationship.

**Source:** Laws 1978, LB 361, § 13; Laws 2009, LB30, § 14.

**81-885.49 Continuing education and training; purpose.**

The purpose of sections 81-885.49 to 81-885.54 is to establish requirements for continuing education and training of real estate brokers and salespersons who are licensed in order to maintain and improve the quality of real estate services provided to the public.

**Source:** Laws 1985, LB 101, § 5; Laws 2011, LB24, § 1.

**81-885.50 Continuing education and training; terms, defined.**

As used in sections 81-885.49 to 81-885.54, unless the context otherwise requires:

- (1) Commission shall mean the State Real Estate Commission;
- (2) Licensee shall mean a natural person who is licensed by the commission as a real estate broker or salesperson; and
- (3) Two-year period shall mean twenty-four months commencing on January 1 following either the date of licensing of the real estate broker or salesperson or March 8, 1985, whichever is later, and each succeeding twenty-four-month period.

**Source:** Laws 1985, LB 101, § 6.

**81-885.51 Continuing education and training; evidence of completion.**

In each two-year period, every licensee shall complete twelve hours of approved continuing education activities and six hours of broker-approved training. Evidence of completion of such continuing education and training activities for the two-year period shall be submitted to the commission pursuant to rules and regulations adopted and promulgated by the commission.

**Source:** Laws 1985, LB 101, § 7; Laws 2002, LB 863, § 25; Laws 2011, LB24, § 2.

**81-885.52 Continuing education and training; certify activities.**

(1) The commission shall certify as approved continuing education activities those courses, lectures, seminars, or other instructional programs which it determines would protect the public by improving the competency of licensees. The commission may require descriptive information about any continuing education or training activity and refuse approval of any continuing education or training activity which does not advance the purposes of sections 81-885.49 to 81-885.54. The commission shall not approve any provider of continuing education or training courses, lectures, seminars, or other instructional programs unless such provider meets the standards established by the commission.

(2) The commission shall certify the number of hours to be awarded for participation in an approved continuing education activity, based upon contact or classroom hours or other criteria prescribed by rule and regulation of the commission.

(3) The commission may certify the number of hours to be awarded for successful completion of a course delivered in a distance education format, based upon the number of hours which would be awarded in an equivalent classroom course or program or other criteria prescribed by rule and regulation of the commission.

**Source:** Laws 1985, LB 101, § 8; Laws 2002, LB 863, § 26; Laws 2011, LB24, § 3.

**81-885.53 Continuing education and training; licensee; requirements.**

Except for inactive licensees, the commission shall not renew a license or issue a new license to any licensee who has failed to comply with the requirements of sections 81-885.49 to 81-885.54. Inactive licensees may renew their licenses at the end of the two-year period without having completed the hours of continuing education and training activities required by section 81-885.51 for each two-year period. Inactive licensees shall not be activated until the licensee has satisfactorily completed the total number of deficient hours of continuing education activities and filed evidence of such completion with the commission, except that no inactive licensee shall be required to make up more than the number of hours of continuing education required by section 81-885.51 for a two-year period.

**Source:** Laws 1985, LB 101, § 9; Laws 2002, LB 863, § 27; Laws 2011, LB24, § 4.

**81-885.54 Continuing education and training; rules and regulations.**

The commission shall adopt and promulgate rules and regulations necessary for the effective administration of sections 81-885.49 to 81-885.54 pursuant to the Administrative Procedure Act. Such rules and regulations may include, but not be limited to, the establishment of minimum standards for schools, courses, and instructors.

**Source:** Laws 1985, LB 101, § 10.

**Cross References**

Administrative Procedure Act, see section 84-920.

**81-885.55 Errors and omissions insurance; commission; duties; certificate of coverage; required; when; group plan unavailable at a reasonable premium; effect.**

(1) Every licensee under the Nebraska Real Estate License Act, except an inactive broker or salesperson, shall have errors and omissions insurance to cover all activities contemplated under the act. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(2) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual license renewal date. A certificate of coverage showing compliance with the required terms and conditions shall be filed with the commission by the annual license renewal date by each licensee who does not participate in the group program administered by the commission.

(3) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed five hundred dollars, the errors and

omissions insurance requirement of this section shall not apply during the year for which coverage cannot be obtained.

**Source:** Laws 1991, LB 118, § 1; Laws 2002, LB 863, § 28; Laws 2004, LB 845, § 4.

**81-886 Repealed. Laws 1973, LB 68, § 49.**

**81-886.01 Repealed. Laws 1973, LB 68, § 49.**

**81-886.02 Repealed. Laws 1973, LB 68, § 49.**

**81-886.03 Repealed. Laws 1973, LB 68, § 49.**

**81-886.04 Repealed. Laws 1973, LB 68, § 49.**

**81-886.05 Repealed. Laws 1973, LB 68, § 49.**

**81-886.06 Repealed. Laws 1973, LB 68, § 49.**

**81-886.07 Repealed. Laws 1973, LB 68, § 49.**

**81-887 Repealed. Laws 1973, LB 68, § 49.**

**81-887.01 Auctioneers; nonresident; reciprocity.**

Auctioneers of any state, which admits auctioneers of this state to conduct public auction sales in such state without license or other regulation, shall be permitted to conduct public sales in this state upon the same terms. Auctioneers of any state, which requires auctioneers of this state to secure a license or imposes other regulations for authority to conduct public sales within such state, shall be subject to the same requirements as apply to auctioneers of this state who seek to conduct public sales in such state.

**Source:** Laws 1953, c. 339, § 1, p. 1112.

**81-887.02 Auctioneers; nonresident; license; application; county clerk; fee; disposition.**

Auctioneers of such foreign state, which requires a license or imposes regulations upon auctioneers of this state, who desire to conduct public sales in this state shall, before conducting any such sale, apply to the county clerk of any county in this state for a license to do so. The application shall include the applicant's social security number. Upon considering such application, the county clerk shall issue a license upon the payment of the same fee and compliance with the other requirements required of auctioneers of this state in such foreign state. Such fee shall be deposited with the county treasurer and credited to the general fund of the county.

**Source:** Laws 1953, c. 339, § 2, p. 1112; Laws 1997, LB 752, § 220.

**81-887.03 Auctioneers; nonresident; additional requirements.**

Nothing contained in sections 81-887.01 to 81-887.03 shall be construed to permit any person to conduct a sale of real estate without first complying with the requirements of the Nebraska Real Estate License Act.

**Source:** Laws 1953, c. 339, § 3, p. 1112; Laws 2009, LB30, § 15.

## Cross References

Nebraska Real Estate License Act, see section 81-885.

## (h) NEBRASKA MERIT SYSTEM

**81-888 Repealed. Laws 1951, c. 311, § 11.**

**81-889 Repealed. Laws 1951, c. 311, § 11.**

**81-890 Repealed. Laws 1951, c. 311, § 11.**

**81-891 Repealed. Laws 1951, c. 311, § 11.**

**81-892 Repealed. Laws 1951, c. 311, § 11.**

**81-893 Repealed. Laws 1951, c. 311, § 11.**

**81-894 Repealed. Laws 1951, c. 311, § 11.**

**81-895 Repealed. Laws 1951, c. 311, § 11.**

**81-896 Repealed. Laws 1951, c. 311, § 11.**

**81-897 Repealed. Laws 1951, c. 311, § 11.**

**81-898 Repealed. Laws 1951, c. 311, § 11.**

**81-899 Repealed. Laws 1951, c. 311, § 11.**

**81-8,100 Repealed. Laws 1951, c. 311, § 11.**

**81-8,101 Repealed. Laws 1951, c. 311, § 11.**

**81-8,102 Repealed. Laws 1951, c. 311, § 11.**

**81-8,103 Repealed. Laws 1951, c. 311, § 11.**

**81-8,104 Repealed. Laws 1951, c. 311, § 11.**

**81-8,105 Repealed. Laws 1951, c. 311, § 11.**

**81-8,106 Repealed. Laws 1997, LB 5, § 5.**

**81-8,107 Repealed. Laws 1997, LB 5, § 5.**

## (i) LAND SURVEYING

**81-8,108 Land surveying; declaration of policy; prohibited acts.**

In order to safeguard life, health, and property, any person practicing or offering to practice land surveying in this state shall submit evidence that he or she is qualified to practice and shall be registered as provided in sections 81-8,108 to 81-8,127. It shall be unlawful for any person to practice or to offer to practice land surveying in this state unless such person has been duly registered under such sections.

**Source:** Laws 1957, c. 383, § 1, p. 1332; Laws 1994, LB 874, § 1.

**81-8,109 Land surveying; definitions.**

For purposes of sections 81-8,108 to 81-8,127, unless the context otherwise requires:

(1) Examining board shall mean the State Board of Examiners for Land Surveyors;

(2) Land surveyor shall mean a person who engages in the practice of land surveying;

(3) Surveyor-in-training shall mean a person (a) who is a graduate in an approved surveying or engineering curriculum of four years or more or who has had four or more years of experience in surveying work of a character satisfactory to the examining board and (b) who has successfully passed the examination in the fundamental surveying subjects and has received from the examining board a certificate stating that that portion of the examination has been successfully passed. The fee for such certificate and for the renewal of such certificate shall be set by the examining board; and

(4) Land surveying shall mean the establishment or reestablishment of corners and boundaries and the location of lots, parcels, tracts, or divisions of land, which may include distance, direction, elevation, and acreage, and the correct determination and description of lots, parcels, tracts, or divisions of land for, but not limited to, any of the following purposes:

(a) To furnish a legal description of any tract of land to be used in the preparation of deeds of conveyance when the description is not the same as the one in the deed of conveyance to the current owner or when bearings, distances, or measurements are needed to properly describe the tract being conveyed;

(b) To furnish a legal description of any land surveyed to be used in the platting or subdividing of the land;

(c) To determine the amount of acreage contained in any land surveyed; or

(d) To furnish a topographic plat of a lot, parcel, tract, or division of land and locating natural and artificial features in the air, on the surface or subsurface of the earth, and on the beds or surface of bodies of water for the purpose of establishing the facts of size, area, shape, topography, and orientation of improved or unimproved real property and appurtenances to the real property.

**Source:** Laws 1957, c. 383, § 2, p. 1332; Laws 1971, LB 442, § 1; Laws 1989, LB 263, § 1; Laws 1994, LB 874, § 2.

#### **81-8,110 Land surveying; board of examiners; duties.**

An examining board shall be established for the purpose of examining, testing and interviewing persons aspiring to become registered to practice land surveying. The examining board shall be independent of all other examining boards and is established for the purpose of determining the ability of persons coming before it to practice land surveying.

**Source:** Laws 1957, c. 383, § 3, p. 1333; Laws 1969, c. 514, § 6, p. 2106; Laws 1971, LB 442, § 2.

#### **81-8,110.01 Examining board; members; terms; qualifications; removal; vacancies.**

(1) The examining board shall consist of four members appointed by the Governor who are duly registered under sections 81-8,108 to 81-8,127 to

practice land surveying and one lay member appointed by the Governor who is of the age of legal majority and has been a resident of Nebraska for at least one year immediately prior to appointment to the examining board. Such lay member shall be a representative of consumer viewpoints.

(2) The members of the examining board shall be appointed to five-year terms. Each member shall serve until the appointment and qualification of his or her successor. Each member appointed to the examining board shall receive a certificate of appointment from the Governor. Each member so appointed, prior to beginning his or her term, shall file with the Secretary of State the constitutional oath of office. The Governor may remove any member of the examining board for misconduct, incompetency, incapacity, or neglect of duty or upon conviction of a crime involving moral turpitude. Vacancies on the examining board, however created, shall be filled for the unexpired term of the member by appointment by the Governor.

**Source:** Laws 1971, LB 442, § 3; Laws 1984, LB 478, § 2; Laws 1994, LB 874, § 3.

#### **81-8,110.02 Examining board; members; residence; qualifications.**

Each member of the examining board who is a registered land surveyor shall be a resident of the State of Nebraska for at least one year immediately preceding his or her appointment to the examining board, shall have been engaged in the active practice of the discipline for at least ten years, and shall have been in responsible charge of work for at least five years prior to his or her appointment to the examining board.

**Source:** Laws 1971, LB 442, § 4; Laws 1994, LB 874, § 4.

#### **81-8,110.03 State Surveyor; ex officio secretary of examining board.**

The State Surveyor shall be ex officio secretary of the examining board and of all committees appointed by the examining board.

**Source:** Laws 1971, LB 442, § 5; Laws 1994, LB 874, § 5.

#### **Cross References**

For provisions for appointment of the State Surveyor, see section 84-407.

#### **81-8,110.04 Examining board; meetings.**

The examining board shall hold as many meetings throughout each year as may be necessary to conduct the business of the examining board and to examine, within a reasonable time, the applicants seeking registration. An annual meeting of the examining board shall be held for the election of officers.

**Source:** Laws 1971, LB 442, § 6; Laws 1994, LB 874, § 6.

#### **81-8,110.05 Examining board; meetings; notice.**

Notice of all meetings, including the annual meeting of the examining board, shall be in such manner as provided in the bylaws of the examining board.

**Source:** Laws 1971, LB 442, § 7; Laws 1994, LB 874, § 7.

#### **81-8,110.06 Examining board; officers; election; duties.**

The examining board shall elect from its membership at its annual meeting, officers for the coming year. The officers shall be a chairperson and a vice-

chairperson. The duties of the chairperson shall be to preside at all meetings of the examining board. The vice-chairperson shall preside in the absence of the chairperson and shall, with the other officers, fulfill such other duties and obligations as provided in section 81-8,110.07 and the bylaws.

**Source:** Laws 1971, LB 442, § 8; Laws 1994, LB 874, § 8.

**81-8,110.07 Examining board; secretary; duties; Land Surveyor Examiner's Fund; created; purpose; investment.**

The secretary of the examining board shall receive and account for all money derived from the operation of sections 81-8,108 to 81-8,127 and shall remit it to the State Treasurer for credit to the Land Surveyor Examiner's Fund, which fund is hereby created. This fund shall be continued from year to year. When appropriated by the Legislature, this fund shall be expended only for the purposes of sections 81-8,108 to 81-8,127. When not reappropriated for the succeeding biennium, the money in this fund shall not revert to the General Fund. The fund shall be paid out only upon vouchers approved by the examining board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer. The expenditures of the examining board shall be kept within the income collected and remitted to the State Treasurer by the examining board. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Land Surveyor Examiner's 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 1971, LB 442, § 9; Laws 1986, LB 258, § 35; Laws 1994, LB 874, § 9; Laws 1995, LB 7, § 110; Laws 2009, First Spec. Sess., LB3, § 69.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-8,110.08 Examining board; rules and regulations; publication.**

The examining board shall make and adopt all bylaws and rules, not inconsistent with law, which are needed in performing its duties. Such rules shall be published in the roster of registrants as provided for in section 81-8,113.

**Source:** Laws 1971, LB 442, § 10.

**81-8,110.09 Repealed. Laws 1994, LB 874, § 25.**

**81-8,110.10 Repealed. Laws 1994, LB 874, § 25.**

**81-8,110.11 Examining board; members; expenses.**

Each member of the examining board shall receive, when authorized, all necessary travel, meals, and lodging expenses incidental to the performance of his or her official duties or while attending national meetings or seminars as the official representative of the examining board as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1971, LB 442, § 13; Laws 1981, LB 204, § 180.

**81-8,110.12 Examining board; seal; adopt.**

The examining board shall adopt and have an official seal, which shall be affixed to all registration and in-training certificates that are granted by the examining board. The dimensions of the seal shall be as provided in the bylaws.

**Source:** Laws 1971, LB 442, § 14.

**81-8,110.13 Examining board; registration certificate; issuance; replacement certificate, when; fee.**

The examining board may issue a registration certificate or an in-training certificate to a qualified person. A new certificate of registration of a duly registered person may be issued to replace a certificate lost, destroyed, stolen, or mutilated, subject to the rules and regulations adopted by the examining board. A fee not to exceed fifty dollars shall be charged the applicant for the issuance of a new certificate to replace a previously issued certificate.

**Source:** Laws 1971, LB 442, § 15; Laws 1994, LB 874, § 10.

**81-8,110.14 Examining board; record of proceedings and applications for registration; confidential.**

The examining board shall keep a record of its proceedings and a record of all applications for registration. The information and data retained by the examining board in its files for individual applicants shall be considered as confidential. The records shall not be available to any applicant or the public for any reason.

**Source:** Laws 1971, LB 442, § 16.

**81-8,110.15 Examining board; sue and be sued; liability of members.**

The examining board may sue or be sued as the examining board, and its members need not be named as parties. Members of the examining board shall not be personally liable, jointly or severally, for any act or acts committed in the performance of their official duties as examining board members, nor shall any examining board member be personally liable for any hearing costs or court costs which may accrue in any action by or against the examining board.

**Source:** Laws 1971, LB 442, § 17; Laws 1994, LB 874, § 11.

**81-8,111 Repealed. Laws 1971, LB 442, § 24.**

**81-8,112 Repealed. Laws 1971, LB 442, § 24.**

**81-8,113 Examining board; record of proceedings; roster of surveyors.**

The examining board shall keep a complete record of all its proceedings which, together with all other records and files of the examining board, shall be filed in the office of the State Surveyor. A roster showing the names and places of business of all registered land surveyors shall be prepared by the secretary of the examining board each year. Copies of this roster shall be sent to all persons so registered and shall be furnished to the public on request.

**Source:** Laws 1957, c. 383, § 6, p. 1334; Laws 1994, LB 874, § 12.

**81-8,114 Land surveying; application for registration.**

Applications for registration shall be on forms prescribed and furnished by the examining board and shall be filed with the secretary of the examining

board. Such applications shall contain a statement, made under oath, showing the applicant's education and detailed summary of his or her technical work, the applicant's social security number, and such other information as the examining board shall require.

**Source:** Laws 1957, c. 383, § 7, p. 1334; Laws 1971, LB 442, § 18; Laws 1994, LB 874, § 13; Laws 1997, LB 752, § 221; Laws 2013, LB303, § 1.

**81-8,115 Land surveying; examination of applicants.**

The applicant for registration must pass an examination administered by the examining board which covers generally the matters confronting land surveyors as provided in the rules and bylaws.

**Source:** Laws 1957, c. 383, § 8, p. 1334; Laws 1971, LB 442, § 19; Laws 1984, LB 478, § 3; Laws 1994, LB 874, § 14; Laws 2013, LB303, § 2.

**81-8,116 Repealed. Laws 1994, LB 874, § 25.**

**81-8,117 Land surveying; eligibility for registration; requirements.**

(1) No person shall be eligible for registration unless:

(a) He or she has successfully passed an examination, designed to determine his or her proficiency and qualification to engage in the practice of land surveying. No applicant shall be entitled to take such examination until he or she shows the necessary practical experience in land surveying work; and

(b) He or she (i) has not less than six years of surveying experience of which five years must be as defined in subdivision (4) of section 81-8,109, and three of such five years must have been in a responsible position as a subordinate to a licensed land surveyor, or (ii) has graduated, after a course of not less than four years in surveying, engineering, or other approved curriculum, with proportionate credit for lesser time, from a school or college approved by the examining board as of satisfactory standing and has an additional two years of practice in a responsible position.

(2) For purposes of this section, responsible position means a position that requires initiative, skill, and independent judgment and does not include the position of chainman, rodman, instrument person, ordinary drafter, or other position performing routine work.

**Source:** Laws 1957, c. 383, § 10, p. 1334; Laws 1969, c. 764, § 3, p. 2894; Laws 1971, LB 442, § 21; Laws 1974, LB 811, § 19; Laws 1984, LB 478, § 4; Laws 1994, LB 874, § 15; Laws 2013, LB303, § 3.

**81-8,118 Land surveying; application and registration fees; examination fee; failure to pay fees, effect.**

To pay the expense of the operation and enforcement of sections 81-8,108 to 81-8,127, the examining board shall establish application and registration fees. Total application and registration fees shall not exceed two 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. The board may direct applicants to pay the examination fee directly to a third party who has contracted to administer the examination. At the time the application for registration is

submitted the board shall collect from the applicant a nonrefundable application fee. If the applicant successfully qualifies by examination, he or she shall be registered until April 1 of the immediately following odd-numbered year upon payment of a registration fee as set forth in the rules or regulations. After the issuance of a certificate of registration, a biennial fee of not less than five nor more than one hundred fifty dollars, as the examining board shall direct, shall be due and payable on or before January 1 of each odd-numbered year. Failure to remit biennial fees when due shall automatically cancel the registration effective the immediately following April 1, but otherwise the registration shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the examining board for just cause. A registration which has been canceled for failure to pay the biennial fee when due may be reinstated within one year, but the biennial fee shall be increased ten percent for each month or fraction of a month that payment is delayed. Nothing in this section shall prevent the examining board from suspending or revoking any registration for just cause.

**Source:** Laws 1957, c. 383, § 11, p. 1335; Laws 1971, LB 442, § 22; Laws 1985, LB 564, § 1; Laws 1986, LB 621, § 1; Laws 1994, LB 874, § 16; Laws 2007, LB252, § 1.

**81-8,119 Repealed. Laws 1971, LB 442, § 24.**

**81-8,119.01 Certificate of registration; renewal; professional development requirements; inactive status.**

(1) As a condition for renewal of a certificate of registration issued pursuant to sections 81-8,108 to 81-8,127, a certificate holder who has previously renewed his or her registration shall be required to successfully complete thirty hours of professional development within the preceding two calendar years. Any certificate holder who completes in excess of thirty hours of professional development within the preceding two calendar years may have the excess, not to exceed fifteen hours, applied to the requirement for the next biennium.

(2) The examining board shall not renew the certificate of registration of any certificate holder who has failed to complete the professional development requirements pursuant to subsection (1) of this section, unless he or she can show good cause why he or she was unable to comply with such requirements. If the examining board determines that good cause was shown, the examining board shall permit the registered surveyor to make up all outstanding required hours of professional development.

(3) A certificate holder may at any time prior to the termination of his or her registration request to be classified as inactive. Such inactive registrations may be maintained by payment of a biennial fee of not less than five nor more than fifty dollars as determined by the examining board. Holders of inactive certificates of registration shall not be required to complete professional development as required in subsection (1) of this section. Holders of inactive certificates shall not practice land surveying. If the examining board determines that an inactive registrant has actively practiced land surveying, the examining board may immediately revoke his or her certificate of registration.

(4) A holder of an inactive certificate of registration may return his or her certificate to an active registration to practice land surveying by the applicant electing to either:

(a) Complete one and one-half the biennial requirement for professional development. Such requirement shall be satisfied as set forth in the rules or bylaws; or

(b) Take such examination as the examining board deems necessary to determine his or her qualifications. Such examination shall cover areas designed to demonstrate the applicant's proficiency in current methods of land surveying practice.

Additionally he or she shall pay the biennial fee as required in section 81-8,118.

**Source:** Laws 1984, LB 478, § 6; Laws 1985, LB 564, § 2; Laws 1986, LB 621, § 2; Laws 1994, LB 874, § 17.

#### **81-8,119.02 Professional development programs; rules and regulations.**

The examining board shall adopt and promulgate such administrative procedures and rules and regulations as are necessary for the effective delivery and certification of all programs of professional development required in section 81-8,119.01.

**Source:** Laws 1984, LB 478, § 7; Laws 1994, LB 874, § 18.

#### **81-8,120 Land surveying; nonresident; registration; fee; service of process.**

A nonresident of this state who is registered as a land surveyor in another state may be registered under sections 81-8,108 to 81-8,127 by filing an application with the secretary of the examining board and making payment to the examining board of a fee in the sum of not less than twenty-five dollars and not more than one hundred fifty dollars as set forth in the rules or bylaws. The applicant shall be required to take such examinations as the examining board deems necessary to determine his or her qualifications, but in any event he or she shall be required to pass an examination of not less than four hours' duration which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state. Before a nonresident of this state is registered under sections 81-8,108 to 81-8,127, he or she shall first file a written consent that actions and suits at law may be commenced against him or her in any county of this state in which any cause of action may arise because of any survey commenced or conducted by such nonresident surveyor or his or her agent or employees in such county.

**Source:** Laws 1957, c. 383, § 13, p. 1336; Laws 1971, LB 442, § 23; Laws 1983, LB 447, § 97; Laws 1985, LB 564, § 3; Laws 1994, LB 874, § 19; Laws 2013, LB303, § 4.

#### **81-8,121 Land surveying; registered land surveyor; rights and privileges; seal.**

The issuance of a certificate of registration by the examining board shall be evidence that the person named therein is entitled to all rights and privileges of a registered land surveyor and that the recipient thereof is admitted to the practice of land surveying in this state while the certificate remains unsuspending, unrevoked, or unexpired. The examining board shall provide for each person registered a seal bearing the registrant's name and the legend Registered Land Surveyor. Plats, reports, and field notes issued by a registered land surveyor may be stamped with his or her seal or a facsimile thereof which is

approved by the examining board during the life of his or her certificate. It shall be unlawful for any one to stamp or seal any documents with a seal or facsimile thereof after the certificate of the registrant named thereon has been suspended or revoked or has expired.

**Source:** Laws 1957, c. 383, § 14, p. 1336; Laws 1994, LB 874, § 20.

**81-8,122 Land survey; where filed.**

When the county shall receive an official copy of a survey from a registered land surveyor or from the survey record repository established pursuant to section 84-412, such copy shall be placed on file in the office of the county surveyor in the county where the land is located. If no regular office is maintained in the county courthouse for the county surveyor, it shall be placed on file in the office of the county clerk.

**Source:** Laws 1957, c. 383, § 15, p. 1337; Laws 1982, LB 127, § 10.

**81-8,122.01 Land survey; filing; contents.**

Whenever a survey has been executed by a land surveyor, registered under the provisions of sections 81-8,108 to 81-8,127, a record of such survey bearing the signature and seal of the land surveyor shall be filed in the survey record repository established pursuant to section 84-412 if such survey meets applicable regulations. Surveys which are within the corporate limits of a city with a population in excess of fifteen thousand and do not reference, recover, retrace, or reestablish the original government corners or lines or do not create a new subdivision are not required to be filed in the survey record repository but shall be filed in the county surveyor's office in the county where the land is located if they meet applicable regulations. If no regular office is maintained in the county courthouse for the county surveyor, it shall be filed in the survey record repository. The record of survey shall be filed within ninety days after the completion of the survey, or within any extension of time granted by the office in which it is required to be filed for reasonable cause, and shall consist of the following minimum data: (1) Plat of the tract surveyed; (2) legal description of the tract surveyed; (3) description of all corners found; (4) description of all corners set; (5) ties to any section corners, quarter corners, or quarter-quarter corners found or set; (6) plat or record distances as well as field measurements; and (7) date of completion of survey. The record of survey so filed shall become an official record of survey, and shall be presumptive evidence of the facts stated therein, unless the land surveyor filing the survey shall be interested in the same. Plats or maps which are prepared only for the purpose of showing the location of improvements on existing lots, which are not represented as surveys or land surveys and no corners are established or reestablished, shall be specifically exempt from all requirements of this section.

**Source:** Laws 1969, c. 764, § 1, p. 2893; Laws 1982, LB 127, § 11.

**81-8,122.02 Land survey; failure to file record; effect.**

Any registered land surveyor who fails to file a record of survey as provided in section 81-8,122.01 shall be reported to the examining board which shall take whatever action, as provided in section 81-8,123, that it deems appropriate.

**Source:** Laws 1969, c. 764, § 2, p. 2893; Laws 1994, LB 874, § 21.

**81-8,123 Land surveyor; complaint; probation, suspension, or revocation of registration; grounds.**

The examining board may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any land surveyor. It shall have the power to place any land surveyor on probation or to revoke or suspend any registration under the provisions of sections 81-8,108 to 81-8,127 when the land surveyor has been found guilty of any of the following practices: (1) Fraud or deceit in obtaining a registration; (2) negligence or incompetency in the performance of his or her duties; or (3) misconduct in the performance of his or her duties.

**Source:** Laws 1957, c. 383, § 16, p. 1337; Laws 1984, LB 478, § 5; Laws 1994, LB 874, § 22.

Incompetency refers to a demonstrated lack of skill to perform duties of licensed land surveyor; misconduct violates standards of professional behavior established through professional experience. A land surveyor must exercise care which a survey-

or of ordinary skill and prudence would exercise under similar circumstances. *Simonds v. Board of Examiners*, 213 Neb. 259, 329 N.W.2d 92 (1983).

**81-8,124 Land surveyor; suspension or revocation of registration; hearing; notice.**

Before the examining board revokes or suspends the registration of any land surveyor, it shall give the registrant a hearing on the matter and shall, at least twenty days prior to the date set for the hearing, notify such registrant in writing. Such notice shall contain an exact statement of the charges against the land surveyor and the date and place of hearing. Such registrant shall be heard in person or by counsel before an examiner appointed by the examining board in reference to such charges. Such notice may be served by delivering it personally to the registrant or by sending it by either registered or certified mail addressed to his or her last-known business address as shown by his or her registration.

**Source:** Laws 1957, c. 383, § 17, p. 1337; Laws 1994, LB 874, § 23.

**81-8,125 Land surveyor; suspension or revocation of registration; hearing; attendance of witnesses; record; findings; order; effect.**

The examiner shall have power to compel the attendance of witnesses and to administer oaths and shall take testimony and proof concerning the charges stated in the complaint. A complete record shall be made of all testimony taken and evidence received at such hearing, which record shall be filed with the secretary of the examining board. The examiner conducting such hearing shall make in writing complete findings and recommendations to the examining board. Thereafter, the examining board shall, in writing officially signed by all members concurring therein, make its findings, determination, and order in the matter. If the examining board finds that the registrant has been guilty of any of the practices set forth in section 81-8,123, the land surveyor shall be placed on probation or his or her registration shall be revoked or suspended. As a condition of probation the examining board may restrict the land surveyor's scope of practice or require supervision of the land surveyor's practice.

**Source:** Laws 1957, c. 383, § 18, p. 1337; Laws 1994, LB 874, § 24.

**81-8,126 Land surveying; applicability of law.**

Sections 81-8,108 to 81-8,127 shall not apply to (1) any land surveyor working for the United States Government while performing his or her duties as an employee of the government, (2) any person employed as an assistant to a land surveyor registered under such sections, or (3) any professional engineer or person working under the direct supervision of a professional engineer licensed under the Engineers and Architects Regulation Act doing work which does not involve the location, description, establishment, or reestablishment of property corners or property lines or work which does not create descriptions, definitions, or areas for transfer of an estate in real property.

**Source:** Laws 1957, c. 383, § 19, p. 1338; Laws 1989, LB 263, § 2; Laws 1997, LB 622, § 118.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

**81-8,127 Land surveying; unlawful practice or use of title; penalty.**

Any person, firm, partnership, limited liability company, corporation, or joint-stock association who or which practices or offers to practice land surveying or uses the title of land surveyor in this state without being registered or any person not registered under sections 81-8,108 to 81-8,127 who fails to file a copy of the plat and field notes as provided in section 81-8,122 shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1957, c. 383, § 20, p. 1338; Laws 1977, LB 39, § 297; Laws 1993, LB 690, § 2; Laws 1994, LB 884, § 93.

(j) STATE ATHLETIC COMMISSIONER

**81-8,128 State Athletic Commissioner; appointment; term; salary; bond or insurance; assistants.**

There is hereby established the position of State Athletic Commissioner. The commissioner shall be appointed by the Governor and shall hold office for a term of two years commencing the first Thursday after the first Tuesday of January in each odd-numbered year. The commissioner shall receive such salary as the Governor may elect and shall be bonded or insured as required by section 11-201. The commissioner may be reappointed for successive terms.

The office of the commissioner shall be located within and under the general supervision of the Charitable Gaming Division of the Department of Revenue. The commissioner may exercise and perform his or her powers and duties at any location in the state. The commissioner may employ assistants and fix their compensation in conjunction with the Charitable Gaming Division. The compensation of assistants and expenses of the office of the commissioner shall be paid through the State Athletic Commissioner's Cash Fund.

**Source:** Laws 1957, c. 382, § 1, p. 1326; Laws 1978, LB 653, § 33; Laws 1993, LB 397, § 2; Laws 2004, LB 884, § 41; Laws 2006, LB 941, § 1; Laws 2010, LB879, § 21; Laws 2011, LB210, § 11.

**81-8,128.01 State Athletic Commissioner; salary increase; when effective.**

Section 81-8,128 shall be so interpreted as to effectuate its general purpose to provide, in the public interest, adequate compensation as therein provided for the State Athletic Commissioner, and to permit a change in such salary as soon

as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1967, c. 591, § 2, p. 2011.

**81-8,129 State Athletic Commissioner; jurisdiction; activities covered.**

The State Athletic Commissioner shall have sole direction, management, control, and jurisdiction over all professional mixed martial arts, professional wrestling, professional boxing, and professional sparring matches and exhibitions and all amateur mixed martial arts matches and exhibitions to be held within the state, except such as are conducted by universities, colleges, high schools, the military, and recognized amateur associations for contestants under sixteen years of age. No professional boxers, professional mixed martial arts contestants, or professional wrestlers, or amateur mixed martial arts contestants who have attained the age of sixteen, shall participate in a match or exhibition for a prize or purse, or at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, in this state except by a club, association, organization, or person licensed by the commissioner, as provided in section 81-8,130, and in pursuance of a license granted by the commissioner for such match or exhibition under section 81-8,130.01.

**Source:** Laws 1957, c. 382, § 2, p. 1327; Laws 1980, LB 849, § 2; Laws 2007, LB471, § 1; Laws 2012, LB869, § 1.

Fight contests, which include kickboxing, mixed martial arts, and submission wrestling, do not qualify as professional wrestling or boxing matches or exhibitions as those terms are used in the statute. The State Athletic Commissioner has jurisdiction

over professional wrestling and boxing and has no authority to issue a license for fight contests. *Mason v. City of Lincoln*, 266 Neb. 399, 665 N.W.2d 600 (2003).

**81-8,129.01 State Athletic Commissioner's Cash Fund; created; receipts; disbursements.**

There is hereby created a fund, to be known as the State Athletic Commissioner's Cash Fund, from which shall be appropriated such amounts as are available and as shall be considered incident to the administration of the State Athletic Commissioner's office. Money in the State Athletic Commissioner's Cash Fund may be transferred to the General Fund at the direction of the Legislature. The fund shall contain all license fees and gross receipts taxes collected by the commissioner as provided under sections 81-8,128 to 81-8,142.01, which shall be paid into the state treasury and the State Treasurer shall credit the money to the State Athletic Commissioner's Cash Fund.

**Source:** Laws 1973, LB 118, § 1; Laws 1980, LB 849, § 3; Laws 1983, LB 469, § 6.

**81-8,130 Amateur mixed martial arts matches or exhibitions; license; fee.**

The State Athletic Commissioner may issue an annual license for conducting amateur mixed martial arts matches or exhibitions to any club, association, or organization. Each application for a license shall be accompanied by a fee set by the commissioner in rule and regulation. Such fee shall be not less than twenty-five dollars and not more than one hundred dollars.

**Source:** Laws 1957, c. 382, § 3, p. 1327; Laws 1980, LB 849, § 4; Laws 2002, LB 482, § 1; Laws 2012, LB869, § 2.

**81-8,130.01 Professional matches; promoters; licenses and permits; fee.**

Licenses and permits may be issued to professional mixed martial arts, professional boxing, or professional wrestling promoters, whether persons, clubs, or associations, for the sole purpose of conducting professional matches under such rules and regulations as the State Athletic Commissioner shall adopt. Each application for such license shall be accompanied by a fee set by the commissioner in rule and regulation. Such fee shall be not less than one hundred dollars and not more than three hundred dollars. If the promoter is an individual, the application shall include his or her social security number.

**Source:** Laws 1980, LB 849, § 17; Laws 1997, LB 752, § 222; Laws 2002, LB 482, § 2; Laws 2007, LB471, § 2; Laws 2012, LB869, § 3.

#### **81-8,131 Mixed martial arts, defined.**

For purposes of sections 81-8,128 to 81-8,142.01, mixed martial arts, commonly referred to as MMA, means an unarmed combat sport in which two competitors seek to achieve dominance over each other by utilizing a combination of permitted martial arts techniques from disciplines of martial arts, including, but not limited to, grappling, kicking, and striking. Martial arts means any one of the disciplines set forth in rules and regulations adopted and promulgated by the State Athletic Commissioner.

**Source:** Laws 2007, LB471, § 11.

#### **81-8,132 Licensee; bond; conditions.**

No license shall be granted unless the licensee has executed a bond in the sum of not less than one thousand dollars in the case of amateur mixed martial arts, nor less than five thousand dollars in the case of professional wrestling, professional mixed martial arts, or professional boxing. The license shall be approved by the State Athletic Commissioner, conditioned on the faithful compliance by the licensee with the provisions of sections 81-8,129 to 81-8,142.01, the rules and regulations of the commissioner, and such other laws of the state as may be applicable to anything done by the licensee in pursuance of the license.

**Source:** Laws 1957, c. 382, § 5, p. 1328; Laws 1980, LB 849, § 5; Laws 2007, LB471, § 3; Laws 2012, LB869, § 4.

#### **81-8,133 Referees; license; duties; fee.**

The State Athletic Commissioner is authorized to grant licenses to competent referees, upon an application and the payment of a fee set by the commissioner in rule and regulation. Such fee shall be not less than ten dollars and not more than forty dollars per annum. The commissioner may revoke any license so granted for such cause as may be deemed sufficient. At every professional wrestling, professional boxing, professional mixed martial arts, amateur mixed martial arts, or professional sparring match or exhibition, there shall be in attendance a duly licensed referee, who shall direct and control the match. The referee shall stop the match whenever he or she deems it advisable, (1) because of the physical condition of the contestants or one of them, (2) when one of the contestants is clearly outclassed by his or her opponent, or (3) for any other sufficient reason. The referee shall, at the termination of every professional wrestling, professional boxing, professional mixed martial arts, amateur mixed martial arts, or professional sparring match or exhibition, indicate a winner.

The fees of the referee and other licensed officials may be fixed by the commissioner and shall be paid by the licensed organization.

**Source:** Laws 1957, c. 382, § 6, p. 1328; Laws 1980, LB 849, § 6; Laws 2002, LB 482, § 3; Laws 2007, LB471, § 4; Laws 2012, LB869, § 5.

**81-8,133.01 Other officials and contestants; license required; fees; revocation of license.**

The State Athletic Commissioner may grant licenses to qualified physicians, managers, matchmakers, and professional mixed martial arts, professional wrestling, professional boxing, or professional sparring match or exhibition judges upon an application and payment of an annual fee set by the commissioner in rule and regulation. Such fee for matchmakers shall be not less than ten dollars and not more than one hundred dollars. Such fee for physicians, managers, and professional mixed martial arts, professional wrestling, professional boxing, or professional sparring match or exhibition judges shall be not less than ten dollars and not more than twenty dollars. The commissioner may also grant licenses to qualified timekeepers, contestants, and seconds upon an application and payment of an annual fee set by the commissioner in rule and regulation. Such fee shall be not less than ten dollars and not more than twenty dollars. The application shall include the applicant's social security number. No person shall serve as physician, manager, matchmaker, or judge at any professional mixed martial arts, professional wrestling, professional boxing, or professional sparring match or exhibition who is not licensed as such. No person shall serve as timekeeper or contestant at any professional wrestling, professional mixed martial arts, or professional boxing match who is not licensed as such. The commissioner shall have summary authority to stop any match at which any person is serving in violation of the provisions of this section. Any license granted under the provisions of this section may be revoked for cause.

**Source:** Laws 1963, c. 501, § 1, p. 1604; Laws 1980, LB 849, § 7; Laws 1984, LB 980, § 1; Laws 1997, LB 752, § 223; Laws 2002, LB 482, § 4; Laws 2007, LB471, § 5; Laws 2012, LB869, § 6.

**81-8,134 Boxing, mixed martial arts, or sparring matches; rules governing.**

(1) Any professional boxing match, professional mixed martial arts match, or amateur mixed martial arts match conducted in this state which is labeled or promoted as a championship boxing match or a championship mixed martial arts match shall have regional or national significance and the approval of a nationally recognized professional boxing or mixed martial arts association.

(2) Professional boxing or professional sparring matches or exhibitions shall not exceed ten rounds in length, except in a championship match, which shall not exceed fifteen rounds. No round shall be longer than three minutes. At least one minute shall intervene between rounds. The contestants shall wear during the contest gloves weighing at least eight ounces each.

(3) Professional mixed martial arts matches or exhibitions shall not exceed three rounds in length, except in a championship match, which shall not exceed five rounds in length. No round shall be longer than five minutes. At least one minute shall intervene between rounds.

(4) No professional boxing contestant, professional mixed martial arts contestant, or amateur mixed martial arts contestant shall be allowed to participate or

take part in any contest in this state unless a duly licensed physician shall certify in writing that such contestant has taken a physical examination the day of the contest and is physically fit to engage in the proposed contest.

**Source:** Laws 1957, c. 382, § 7, p. 1328; Laws 1980, LB 849, § 8; Laws 2007, LB471, § 6; Laws 2012, LB869, § 7.

**81-8,135 Licensee; reports; contents; gross receipts tax; amounts.**

Every licensee conducting or holding any professional mixed martial arts, amateur mixed martial arts, professional wrestling, or professional boxing match shall furnish to the State Athletic Commissioner a written report showing the articles of agreement between the contestants, the number of tickets sold for each contest, the amount of the gross receipts thereof, the gross receipts from sale of any television rights, and such other matters as the commissioner shall prescribe. Within such time the licensee shall pay to the commissioner a tax of five percent of the total gross receipts of any professional mixed martial arts, professional wrestling, or professional boxing match or exhibition, exclusive of state and federal taxes, except the gross receipts from sale of television rights, and five percent of such rights, and five percent of the total gross receipts of any amateur mixed martial arts match or exhibition, exclusive of state and federal taxes, except that if such match or exhibition is conducted as an incidental feature in any event or entertainment of a different character, such portion of the total receipts shall be paid to the state as the commissioner may determine, or as may be fixed by rule adopted under section 81-8,139.

**Source:** Laws 1957, c. 382, § 8, p. 1329; Laws 1961, c. 434, § 1, p. 1349; Laws 1963, c. 520, § 1, p. 1638; Laws 1969, c. 778, § 4, p. 2951; Laws 1980, LB 849, § 9; Laws 2007, LB471, § 7; Laws 2012, LB869, § 8.

**81-8,136 Tickets; sale; commissioner may supervise.**

The State Athletic Commissioner may have control and supervision of the sale of tickets and the issuing of complimentary tickets. He or she may be represented to supervise and check the counting of receipts, to enforce any and all rules and regulations of the commissioner, and to see that the provisions of sections 81-8,128 to 81-8,142.01, the rules and regulations of the commissioner, and the articles of agreement are carried out and complied with.

**Source:** Laws 1957, c. 382, § 9, p. 1329; Laws 1980, LB 849, § 10.

**81-8,137 License; revocation or suspension; grounds.**

Any license granted under the provisions of sections 81-8,128 to 81-8,142.01 may be revoked or suspended by the State Athletic Commissioner for a violation of the provisions of sections 81-8,128 to 81-8,142.01, the articles of agreement, any rule or regulation of the commissioner, or when the licensee, in the judgment of the commissioner, has been guilty of any act or offense detrimental to the public interest.

**Source:** Laws 1957, c. 382, § 10, p. 1329; Laws 1980, LB 849, § 11.

**81-8,138 Contestants; compensation; when payable; fake contests.**

No contestant in any match or exhibition shall be paid for services until the same are rendered, and should it be determined by the State Athletic Commissioner that a contestant did not give an honest exhibition of his or her skill, he or she shall not be paid. Any contestant who shall participate in any sham or fake professional boxing, professional mixed martial arts, or amateur mixed martial arts match or exhibition shall be disqualified and shall not thereafter be permitted to contend in any match or exhibition in this state, and any contestant who shall participate in any sham or fake professional boxing, professional mixed martial arts, or amateur mixed martial arts match or exhibition shall be guilty of a violation of sections 81-8,128 to 81-8,142.01.

**Source:** Laws 1957, c. 382, § 11, p. 1330; Laws 1980, LB 849, § 12; Laws 2007, LB471, § 8; Laws 2012, LB869, § 9.

**81-8,139 State Athletic Commissioner; rules and regulations; powers.**

The State Athletic Commissioner shall adopt and promulgate such rules and regulations for the administration and enforcement of sections 81-8,128 to 81-8,142.01 as he or she may deem necessary. Such rules and regulations shall include, but not be limited to, the establishment of written criteria for the granting and revoking of licenses, the setting of license fees, and the qualification requirements for those to be licensed as referees, physicians, managers, matchmakers, and professional wrestling, professional boxing, professional mixed martial arts, or professional sparring match or exhibition judges. He or she shall have the power and may control and limit the number of professional mixed martial arts, amateur mixed martial arts, professional wrestling, professional boxing, or professional sparring matches or exhibitions given, or to be held, each year, or within one week, in any city or town, or by any organization. He or she may reprimand any amateur or professional athlete or any official or suspend for a period, not to exceed one year, his or her right to participate in any match or exhibition conducted by any licensee for unsportsmanlike conduct while engaged in or arising directly from any match or exhibition, failure to compete in good faith, engaging in any sham match or exhibition, or the use of threatening and abusive language toward officials, other contestants, or spectators.

**Source:** Laws 1957, c. 382, § 12, p. 1330; Laws 1975, LB 5, § 1; Laws 1980, LB 849, § 13; Laws 2002, LB 482, § 5; Laws 2007, LB471, § 9; Laws 2012, LB869, § 10.

**81-8,139.01 Repealed. Laws 2013, LB 78, § 23.**

**81-8,140 Repealed. Laws 1981, LB 545, § 52.**

**81-8,141 Licensee; reports; failure to make; investigation; determination of tax; failure to pay; effect.**

(1) Whenever any club, corporation, association, or person shall fail to make a report of any contest at the time prescribed by section 81-8,135, or whenever such report is unsatisfactory to the State Athletic Commissioner, he or she may examine, or cause to be examined, the books and records of such club, corporation, association, or person, and subpoena and examine under oath any officers or persons as witnesses for the purpose of determining the total amount of the gross receipts for any contest and the amount of taxes due pursuant to the provisions of section 81-8,135, which tax the commissioner may, upon and

as a result of such examination, fix and determine. In case of a default in the payment of any taxes so adjudged to be due, together with the expenses incurred in making such examination, for a period of twenty days after notice to such delinquent club, corporation, association, or person of the amount, such delinquent club, corporation, association, or person shall ipso facto forfeit its, his, or her license and shall be thereby disqualified from receiving any new license, or any renewal of its, his, or her license. It, he, or she shall in addition thereto forfeit to the people of the State of Nebraska the sum of one thousand dollars in the case of amateur licenses and five thousand dollars in the case of professional licenses, which sum may be recovered by the Attorney General in the name of the people of the State of Nebraska in the same manner as other penalties are by law recovered.

(2) The State Athletic Commissioner may employ persons to inspect and collect the taxes required to be submitted to the commission under section 81-8,135. Any such inspector shall be bonded or insured as required by section 11-201.

**Source:** Laws 1957, c. 382, § 14, p. 1330; Laws 1980, LB 849, § 15; Laws 2004, LB 884, § 42.

**81-8,142 Violations; penalty.**

Any person who violates any of the provisions of sections 81-8,128 to 81-8,142.01 or who assists another to violate the same, shall be guilty of a Class III misdemeanor.

**Source:** Laws 1957, c. 382, § 15, p. 1331; Laws 1977, LB 39, § 298; Laws 1980, LB 849, § 16.

**81-8,142.01 Violations; Attorney General; duties.**

The State Athletic Commissioner may inform the Attorney General of any violations of sections 81-8,129 to 81-8,142.01, and may request the Attorney General to prosecute persons committing such violations. The Attorney General shall be authorized upon receipt of the request by the commissioner, to take the appropriate legal action, whether civil or criminal.

**Source:** Laws 1980, LB 849, § 19.

(k) CENTENNIAL COMMISSION

**81-8,143 Repealed. Laws 1969, c. 411, § 1.**

**81-8,144 Repealed. Laws 1969, c. 411, § 1.**

**81-8,145 Repealed. Laws 1969, c. 411, § 1.**

**81-8,145.01 Repealed. Laws 1969, c. 411, § 1.**

**81-8,145.02 Repealed. Laws 1969, c. 411, § 1.**

**81-8,145.03 Repealed. Laws 1969, c. 411, § 1.**

(l) NEBRASKA SONG COMMITTEE

**81-8,146 Repealed. Laws 1969, c. 411, § 1.**

**81-8,147 Repealed. Laws 1969, c. 411, § 1.**

**81-8,148 Repealed. Laws 1969, c. 411, § 1.**

(m) NEBRASKA INDUSTRIAL RESEARCH INSTITUTE

**81-8,149 Repealed. Laws 1967, c. 566, § 15.**

**81-8,150 Repealed. Laws 1967, c. 566, § 15.**

**81-8,151 Repealed. Laws 1967, c. 566, § 15.**

**81-8,152 Repealed. Laws 1967, c. 566, § 15.**

**81-8,153 Repealed. Laws 1967, c. 566, § 15.**

**81-8,154 Repealed. Laws 1967, c. 566, § 15.**

**81-8,155 Repealed. Laws 1967, c. 566, § 15.**

**81-8,156 Repealed. Laws 1967, c. 566, § 15.**

**81-8,157 Repealed. Laws 1967, c. 566, § 15.**

(n) COLLECTION AGENCY

**81-8,158 Transferred to section 45-601.**

**81-8,159 Transferred to section 45-602.**

**81-8,160 Repealed. Laws 1984, LB 471, § 24.**

**81-8,161 Repealed. Laws 1984, LB 471, § 24.**

**81-8,162 Transferred to section 45-603.**

**81-8,163 Repealed. Laws 1984, LB 471, § 24.**

**81-8,164 Repealed. Laws 1984, LB 471, § 24.**

**81-8,165 Transferred to section 45-604.**

**81-8,166 Transferred to section 45-605.**

**81-8,167 Transferred to section 45-606.**

**81-8,168 Transferred to section 45-607.**

**81-8,169 Transferred to section 45-608.**

**81-8,170 Transferred to section 45-609.**

**81-8,171 Transferred to section 45-610.**

**81-8,172 Transferred to section 45-611.**

**81-8,173 Transferred to section 45-612.**

**81-8,174 Transferred to section 45-613.**

**81-8,175 Transferred to section 45-614.**

**81-8,176 Transferred to section 45-615.**

**81-8,177 Transferred to section 45-616.**

**81-8,178 Transferred to section 45-617.**

**81-8,179 Transferred to section 45-618.**

**81-8,180 Transferred to section 45-619.**

**81-8,181 Transferred to section 45-620.**

**81-8,182 Transferred to section 45-621.**

**81-8,183 Transferred to section 45-622.**

(o) PROFESSIONAL LANDSCAPE ARCHITECTS

**81-8,183.01 Act, how cited.**

Sections 81-8,183.01 to 81-8,206 shall be known and may be cited as the Professional Landscape Architects Act.

**Source:** Laws 1967, c. 565, § 25, p. 1867; Laws 1984, LB 477, § 15; R.S.1943, (2008), § 81-8,208; Laws 2012, LB1140, § 1.

**81-8,184 Terms, defined.**

For purposes of the Professional Landscape Architects Act, unless the context otherwise requires:

(1) Professional landscape architect means a person who, by reason of his or her knowledge acquired by professional education or practical experience, or both, is qualified to engage in the practice of professional landscape architecture as provided in the act;

(2) Practice of professional landscape architecture means the performance of professional services such as consultations, investigations, reconnaissance, research, planning, design, or responsible supervision in connection with projects involving the arranging of land and the elements thereon for public and private use and enjoyment, including the alignment of roadways and the location of buildings, service areas, parking areas, walkways, steps, ramps, pools, and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape and aesthetic values, in accordance with accepted professional standards of public health, welfare, and safety. Practice of professional landscape architecture includes the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this subdivision but does not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, the design of public streets and highways, utilities, storm and sanitary sewers, and sewage treatment facilities which are ordinarily included in the practice of engineering or architecture, or the making of land surveys or final land plats for official approval or recording. Nothing contained in the act shall preclude a duly licensed professional landscape architect from performing any of the services defined as practice of professional landscape architecture in this subdivision in connection with the settings, approaches, or environment for buildings, structures, or facilities. Nothing contained in the act shall be construed as authoriz-

ing a professional landscape architect to engage in the practice of architecture, engineering, or land surveying. Nothing in the act shall prohibit any person, firm, or corporation or their officers, agents, or employees from preparing planting plans for plant materials in connection with the sale of nursery stock, plants, trees, shrubs, flowers, sod, or other plant material, outdoor decorative ornaments, seed, fertilizer, chemicals, gardening tools and equipment, and related items of merchandise or the propagation, planting, or growth of any indoor or outdoor plants; and

(3) Board means the State Board of Landscape Architects created by the act.

**Source:** Laws 1967, c. 565, § 1, p. 1860; Laws 1971, LB 98, § 1; Laws 2012, LB1140, § 2.

**81-8,184.01 Act; intent.**

It is the intent of the Legislature, through the Professional Landscape Architects Act, to safeguard the life, health, and property of the citizens of this state and to insure that the landscape architects serving the public meet minimum standards of proficiency and competency.

**Source:** Laws 1984, LB 477, § 1.

**81-8,185 License required; display of certificate of licensure; current certificate holder; how treated.**

(1) No person shall engage in the practice of professional landscape architecture or use or advertise any sign, title, or description tending to imply or designate that such a person is a professional landscape architect unless he or she is licensed as such as provided in the Professional Landscape Architects Act. Every licensee shall display his or her certificate of licensure in a conspicuous place at his or her place of business.

(2) Any person holding a certificate of registration under the act as of July 19, 2012, shall be deemed to be duly licensed under the act until the expiration of such certificate.

**Source:** Laws 1967, c. 565, § 2, p. 1861; Laws 1971, LB 98, § 2; Laws 2012, LB1140, § 3.

**81-8,186 State Board of Landscape Architects; members; appointment.**

There is hereby created a State Board of Landscape Architects consisting of six members who shall be appointed by the Governor. Five members of the board shall be professional landscape architects and one member shall be a layperson of the age of legal majority. All members shall have been residents of this state for at least one year immediately preceding their appointments.

**Source:** Laws 1967, c. 565, § 3, p. 1861; Laws 1971, LB 98, § 3; Laws 1984, LB 477, § 3; Laws 2012, LB1140, § 4.

**81-8,187 Board; members; term.**

The term of office of the members appointed to the board shall be for five years and until their successors are appointed and qualified, except that of the members first appointed, one shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. The

layperson appointed to the board shall serve a five-year term. As their terms expire, their successors shall be appointed for a term of five years.

**Source:** Laws 1967, c. 565, § 4, p. 1862; Laws 1984, LB 477, § 4.

**81-8,188 Board; members; vacancies.**

Vacancies occurring in membership of the board shall be filled by appointment for the unexpired term.

**Source:** Laws 1967, c. 565, § 5, p. 1862.

**81-8,189 Board; members; compensation; expenses.**

Members of the board shall serve without compensation except that they shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties pursuant to the Professional Landscape Architects Act as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1967, c. 565, § 6, p. 1862; Laws 1981, LB 204, § 183; Laws 2012, LB1140, § 5.

**81-8,190 Board; chairperson; meetings; quorum; personnel; employ.**

The board shall elect annually from its members a chairperson and a vice-chairperson. The board shall meet at least once a year at a time and place fixed by the board. Three members shall constitute a quorum. The board may employ such technical and clerical assistants and incur such expense as may be necessary to properly carry out the Professional Landscape Architects Act.

**Source:** Laws 1967, c. 565, § 7, p. 1862; Laws 2012, LB1140, § 6.

**81-8,191 Board; powers; Attorney General provide counsel.**

The board shall be entitled to the counsel and to the services of the Attorney General and shall have power to compel the attendance of witnesses, pay witness fees and mileage as provided in section 81-1176 for state employees, and may take testimony and proofs and may administer oaths concerning any matter within its jurisdiction.

**Source:** Laws 1967, c. 565, § 8, p. 1862; Laws 1981, LB 204, § 184.

**81-8,191.01 Board; powers; rules and regulations; conflict of interest.**

The board may adopt and promulgate rules and regulations which are needed in performing its duties. Such rules and regulations include, but are not limited to, a definition of conflict of interest for board members and the appropriate procedure to follow when a conflict arises. The rules and regulations or a code of professional conduct developed by the board shall also include definitions of or a list of specific practices which constitute fraud, deceit, gross negligence, incompetence, or misconduct and the punishments for such practices which shall be used as the basis to place a professional landscape architect on probation or revoke or suspend a license pursuant to section 81-8,202.

**Source:** Laws 1984, LB 477, § 14; Laws 2012, LB1140, § 7.

**81-8,192 Board; certificates of licensure; list; filing.**

The board shall keep on file a record of all certificates of licensure granted and shall make annual revisions of such record as may be necessary. On or before January 31 of each year, the board shall file with the Secretary of State a complete list of those licensed under the Professional Landscape Architects Act with their addresses and the dates of licensure.

**Source:** Laws 1967, c. 565, § 9, p. 1862; Laws 1981, LB 545, § 31; Laws 2012, LB1140, § 8.

**81-8,193 Board; seal; adopt.**

The board shall adopt and have an official seal which shall be affixed to all certificates of licensure granted and may adopt and promulgate rules and regulations necessary for the proper performance of such duty.

**Source:** Laws 1967, c. 565, § 10, p. 1863; Laws 2012, LB1140, § 9.

**81-8,194 Board; fees; disposition; State Board of Landscape Architects Cash Fund; created; investment.**

(1) The board shall establish fees of not less than one hundred nor more than three hundred dollars for applications for licensure, examinations, certificates of licensure, reciprocal licenses, and renewals based on the administration costs incurred by the board. The board shall collect, account for, and remit such fees to the State Treasurer for credit to the State Board of Landscape Architects Cash Fund which is hereby created.

(2) Transfers may be made from the State Board of Landscape Architects Cash Fund to the General Fund at the direction of the Legislature. Any money in the State Board of Landscape Architects 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 1967, c. 565, § 11, p. 1863; Laws 1971, LB 98, § 4; Laws 1984, LB 477, § 5; Laws 2007, LB396, § 1; Laws 2009, First Spec. Sess., LB3, § 70; Laws 2012, LB1140, § 10.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-8,195 Applications for licensure; statements; fee.**

Applications for licensure shall be on forms prescribed and furnished by the board and shall contain statements made under oath showing the applicant's education and a detailed summary of his or her technical work. Applications for licensure shall be accompanied by an application fee in an amount determined by the board.

**Source:** Laws 1967, c. 565, § 12, p. 1863; Laws 1984, LB 477, § 6; Laws 2012, LB1140, § 11.

**81-8,196 Applicant for licensure; requirements.**

Each applicant for licensure as a professional landscape architect shall complete an application that includes the following requirements:

(1) Proof that the applicant has met the eligibility standards set by the board in rules and regulations adopted and promulgated by the board in consultation with the Council of Landscape Architectural Registration Boards;

(2) Successful passage of a written or electronic examination in landscape architecture which is designed to determine the proficiency and qualifications to engage in the practice of professional landscape architecture; and

(3) That the applicant is of good character.

**Source:** Laws 1967, c. 565, § 13, p. 1863; Laws 1974, LB 811, § 20; Laws 1997, LB 752, § 224; Laws 2012, LB1140, § 12.

**81-8,197 Applicants; examination.**

Examinations shall be administered by the board or the Council of Landscape Architectural Registration Boards at times to be set by the board in consultation with the council.

**Source:** Laws 1967, c. 565, § 14, p. 1864; Laws 1984, LB 477, § 7; Laws 2012, LB1140, § 13.

**81-8,198 Licensee; seal; use; effect.**

Each licensee shall provide himself or herself with a suitable seal with a uniform inscription thereon formulated by the board with which he or she shall stamp all plans, specifications, and reports prepared by him or her. The following shall be stated on the seal: State of Nebraska, the licensee's name, the license number, and Professional Landscape Architect. A license shall be presumptive evidence that the person named therein is legally licensed.

**Source:** Laws 1967, c. 565, § 15, p. 1864; Laws 2012, LB1140, § 14.

**81-8,199 Certificate of licensure; annual fee, payment; issuance.**

The board shall issue a certificate of licensure to each successful applicant upon payment of the annual fee. Each certificate shall be signed by two members of the board under the seal of the board. The certificate shall authorize the applicant to practice professional landscape architecture.

**Source:** Laws 1967, c. 565, § 16, p. 1864; Laws 1984, LB 477, § 8; Laws 2012, LB1140, § 15.

**81-8,200 Certificate of licensure; fee; expiration; notice.**

Certificates of licensure shall expire on the last day of December following their issuance or renewal and shall become invalid on that date unless renewed before the expiration date with the payment of a fee in an amount the board shall determine. The board shall notify every licensee of the expiration date of his or her certificate and the amount of the annual renewal fee at least one month in advance. The fee to be paid for the renewal of a certificate after December 31 shall be increased by ten percent for each month or fraction of a month such payment is delayed, except that the maximum fee for a delayed renewal shall not exceed twice the amount of the original renewal fee and no renewals shall be made after a lapse of one year after the original expiration date thereof. Renewal fees shall not be required while the professional landscape architect is on active duty with the armed forces of the United States. Application for renewal of a lapsed license shall be in the same manner as provided for an original application pursuant to section 81-8,196.

**Source:** Laws 1967, c. 565, § 17, p. 1865; Laws 1984, LB 477, § 9; Laws 2012, LB1140, § 16.

**81-8,200.01 Certificate of licensure; renewal; professional development requirements.**

(1) As a condition for renewal of a certificate of licensure issued pursuant to the Professional Landscape Architects Act, a licensee shall be required to successfully complete fifteen hours of professional development within the preceding calendar year.

(2) The board shall not renew the certificate of licensure of any licensee who has failed to complete the professional development requirements pursuant to subsection (1) of this section, unless he or she can show good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown, the board shall permit the licensee to make up all outstanding required hours of professional development.

**Source:** Laws 1984, LB 477, § 12; Laws 2012, LB1140, § 17.

**81-8,200.02 Professional development programs; rules and regulations.**

The board shall adopt and promulgate rules and regulations as are necessary for the effective delivery and licensure of all programs of professional development required in section 81-8,200.01.

**Source:** Laws 1984, LB 477, § 13; Laws 2012, LB1140, § 18.

**81-8,201 License without examination; when; fee.**

The board may license without examination any applicant who is legally licensed or registered as a professional landscape architect in any other state, territory, or country whose requirements for licensure or registration are at least substantially equivalent to or higher than the requirements of the Professional Landscape Architects Act and which extends the same privileges of reciprocity to professional landscape architects licensed in this state and who has actively practiced for at least one of the three years immediately preceding the application for licensure without examination. The application for reciprocal licensure shall be accompanied by a fee in an amount the board shall determine.

**Source:** Laws 1967, c. 565, § 18, p. 1865; Laws 1984, LB 477, § 10; Laws 2012, LB1140, § 19.

**81-8,202 License; probation, revocation, or suspension; appeal.**

The board may by a four-fifths vote of the entire board place a licensed professional landscape architect on probation or revoke or suspend the license of any professional landscape architect licensed under the Professional Landscape Architects Act whom it finds guilty of (1) deceit in obtaining a license, (2) fraud, (3) gross negligence, (4) incompetency, or (5) misconduct in the practice of professional landscape architecture. Such person shall have the right to appeal the revocation or suspension of his or her license, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1967, c. 565, § 19, p. 1865; Laws 1971, LB 98, § 5; Laws 1984, LB 477, § 11; Laws 1988, LB 352, § 171; Laws 2012, LB1140, § 20.

**Cross References**

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

**81-8,203 Warrants for payment of expenses and compensation; issuance.**

Warrants for the payment of expenses and compensation provided by the Professional Landscape Architects Act shall be issued by the Director of Administrative Services upon presentation of vouchers drawn by the chairperson, but at no time shall the total amount of warrants exceed the total amount of fees collected as provided by the act.

**Source:** Laws 1967, c. 565, § 20, p. 1866; Laws 1967, c. 574, § 1, p. 1897; Laws 2012, LB1140, § 21.

**81-8,204 Certificate of licensure; required; violation; injunction.**

No person shall practice as a professional landscape architect or in any manner designate himself or herself as a professional landscape architect unless he or she has been issued a certificate of licensure pursuant to the Professional Landscape Architects Act. If such person does practice or attempt to practice under the designation of professional landscape architect, he or she may be restrained under permanent injunction.

**Source:** Laws 1967, c. 565, § 21, p. 1866; Laws 1971, LB 98, § 6; Laws 2012, LB1140, § 22.

**81-8,205 Injunction; prohibited acts; violation; penalty.**

Any person who violates a permanent injunction obtained pursuant to section 81-8,204, presents or attempts to file as his or her own the certificate of licensure of another, gives false or forged evidence of any kind to the board in obtaining a certificate of licensure, indorses any document which he or she did not actually prepare or supervise the preparation thereof, falsely impersonates another practitioner of like or different name, or uses a revoked certificate of licensure shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1967, c. 565, § 22, p. 1866; Laws 1977, LB 39, § 300; Laws 2012, LB1140, § 23.

**81-8,206 Persons exempt from act.**

The Professional Landscape Architects Act shall not apply to:

(1) Any person who is an employee of a licensed professional landscape architect and who performs landscape architectural work under the direction and supervision of a licensed professional landscape architect, but such work does not include responsible change of design or administration of construction contracts;

(2) Any full-time employee who performs landscape architectural work for his or her employer when all such work is in connection with a facility owned or operated by the employer and when such work does not endanger the public welfare, health, and safety, and when the service is not offered to the public;

(3) Any architect or professional engineer, but such architect or engineer may not use the title landscape architect or professional landscape architect unless he or she is licensed pursuant to the act; or

(4) Any person who seeks advice or help of any other person in planning, planting, or maintaining the planting or conservation work on any property he or she owns or controls or who does such things himself or herself.

**Source:** Laws 1967, c. 565, § 23, p. 1866; Laws 1971, LB 98, § 7; Laws 1997, LB 622, § 119; Laws 2012, LB1140, § 24.

**81-8,207 Repealed. Laws 1971, LB 98, § 8.**

**81-8,208 Transferred to section 81-8,183.01.**

(p) TORT CLAIMS, STATE CLAIMS BOARD,  
AND RISK MANAGEMENT PROGRAM

**81-8,209 State Tort Claims Act; purpose.**

The State of Nebraska shall not be liable for the torts of its officers, agents, or employees, and no suit shall be maintained against the state, any state agency, or any employee of the state on any tort claim except to the extent, and only to the extent, provided by the State Tort Claims Act. The Legislature further declares that it is its intent and purpose through such act to provide uniform procedures for the bringing of tort claims against the state or an employee of the state and that the procedures provided by such act shall be used to the exclusion of all others.

**Source:** Laws 1969, c. 756, § 1, p. 2845; Laws 1988, LB 864, § 19; Laws 1989, LB 541, § 1.

On an appeal from a judgment rendered in an action brought under the State Tort Claims Act, the findings of the trial court will not be disturbed unless clearly wrong. *Sharkey v. Board of Regents of Univ. of Neb.*, 260 Neb. 166, 615 N.W.2d 889 (2000).

A district court's findings of fact in a proceeding under the State Tort Claims Act will not be set aside unless such findings are clearly erroneous. *Goodenow v. State Dept. of Corr. Servs.*, 259 Neb. 375, 610 N.W.2d 19 (2000).

On an appeal from a judgment rendered in an action brought under the State Tort Claims Act, the findings of the trial court will not be disturbed unless clearly wrong. *Talle v. Nebraska Dept. of Soc. Servs.*, 253 Neb. 823, 572 N.W.2d 790 (1998); *Anderson by and through Anderson/Couvillon v. Nebraska Dept. of Soc. Servs.*, 253 Neb. 813, 572 N.W.2d 362 (1998).

An entity consisting of specifically named counties, created by the Legislature to carry out a state policy of providing services to the mentally retarded, governed by a board consisting of members of the county boards of supervisors or commissioners, supported by funds from the state or participating counties, and lacking the requisites of a political subdivision, is a state agency within the meaning of the State Tort Claims Act. *Roggasch v.*

*Region IV Ofc. of Developmental Dis.*, 228 Neb. 636, 423 N.W.2d 771 (1988).

The state's conduct in maintaining its highways falls squarely within the purview of these sections. *Bean v. State*, 222 Neb. 202, 382 N.W.2d 360 (1986).

The Nebraska State Tort Claims Act, sections 81-8,209 to 81-8,235, does not apply to any claim which is covered by the Nebraska Workmen's Compensation Act, section 48-101 et seq. *Johnston v. State*, 219 Neb. 457, 364 N.W.2d 1 (1985).

Board of Regents of State University is a State Agency, and tort claims against the Board must be brought under the Tort Claims Act, by suit filed in District Court for Lancaster County. *Catania v. The University of Nebraska*, 204 Neb. 304, 282 N.W.2d 27 (1979).

The Tort Claims Act applies to claims for money only. *Czarnick v. Loup River P.P. Dist.*, 190 Neb. 521, 209 N.W.2d 595 (1973).

Under the State Tort Claims Act, a litigant is not authorized to bring suit against the State for alleged negligence in failing to revoke a day-care license issued by the Department of Health and Human Services. *Pittman v. State*, 5 Neb. App. 342, 558 N.W.2d 600 (1997).

**81-8,210 Terms, defined.**

For purposes of the State Tort Claims Act:

(1) State agency includes all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency does not include any contractor with the State of Nebraska;

(2) State Claims Board means the board created by section 81-8,220;

(3) Employee of the state means any one or more officers or employees of the state or any state agency and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee does not include any employee of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act or any contractor with the State of Nebraska;

(4) Tort claim means any claim against the State of Nebraska for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the state, while acting within the scope of his or her office or employment, under circumstances in which the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death but does not include any claim accruing before January 1, 1970, any claim against an employee of the state for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of the employee while acting within the scope of his or her employment occurring on or after August 25, 1989, and any claim allowed under the Nebraska Claims for Wrongful Conviction and Imprisonment Act;

(5) Award means any amount determined by the Risk Manager or State Claims Board to be payable to a claimant under section 81-8,211 or the amount of any compromise or settlement under section 81-8,218; and

(6) Risk Manager means the Risk Manager appointed under section 81-8,239.01.

**Source:** Laws 1969, c. 756, § 2, p. 2845; Laws 1988, LB 864, § 20; Laws 1989, LB 541, § 2; Laws 1991, LB 81, § 6; Laws 1999, LB 87, § 92; Laws 2008, LB821, § 1; Laws 2009, LB260, § 10.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Nebraska Claims for Wrongful Conviction and Imprisonment Act**, see section 29-4601.

Pursuant to subsection (1) of this section, for purposes of filing a claim against a mental health board or its members, the boards of mental health in Nebraska are state agencies within the meaning of the State Tort Claims Act. *Zimmerman v. Douglas Cty. Hosp.*, 252 Neb. 583, 563 N.W.2d 349 (1997).

A claim for remuneration for services rendered pursuant to a contract is not a "tort claim" as defined in this section. Plaintiff's claim was therefore not subject to the exclusive jurisdiction

of the tort claims board. *L. J. Vontz Constr. Co. v. State*, 230 Neb. 377, 432 N.W.2d 7 (1988).

The State Tort Claims Act provides for liability of the state the same as a private person under like circumstances. *Cortes v. State*, 191 Neb. 795, 218 N.W.2d 214 (1974).

Claims for injunctive relief need not be brought under the Tort Claims Act. *Czarnick v. Loup River P.P. Dist.*, 190 Neb. 521, 209 N.W.2d 595 (1973).

### **81-8,211 Risk Manager; State Claims Board; authority; procedure; fees.**

Authority is hereby conferred upon the Risk Manager and State Claims Board, acting on behalf of the State of Nebraska, to consider, ascertain, adjust, compromise, settle, determine, and allow any tort claim. Any claimant dissatisfied with a decision of the Risk Manager may make application for review of the decision by the State Claims Board by filing an application for review with the Risk Manager within sixty days after receipt of notice of the Risk Manager's decision. If any tort claim is compromised, settled, or allowed in an amount of more than five thousand dollars, the approval of the State Claims Board is required. If any tort claim is compromised, settled, or allowed in an amount of more than ten thousand dollars, the unanimous approval of all members of the State Claims Board shall be required. If any tort claim is compromised, settled, or allowed in an amount of more than twenty-five thousand dollars, the claim shall also be submitted for approval by the district court for Lancaster County. When approval of the district court is required, the Attorney General shall make application for such approval and shall file with the application a complete record of the action of the State Claims Board on such claim. The claimant may join in such application, and if the claimant does so, the court may proceed to act on the application without further notice to either party. If

the claimant does not join in the application, the court shall require actual notice to all parties before acting on the application. The court may deny the application for any legal and sufficient reason or may direct the State Claims Board to conduct further hearings on any material issues. The fees of the clerk of the district court for filing, docketing, and indexing such application shall be five dollars.

**Source:** Laws 1969, c. 756, § 3, p. 2846; Laws 1984, LB 1028, § 1; Laws 1988, LB 864, § 21; Laws 2005, LB 485, § 1; Laws 2008, LB821, § 2.

**81-8,212 Tort claims; filing; Risk Manager; Attorney General; duty; service of process.**

All tort claims shall be filed with the Risk Manager in the manner prescribed by the State Claims Board. The Risk Manager shall immediately advise the Attorney General of the filing of any claim. It shall be the duty of the Attorney General to cause a complete investigation to be made of all such claims and serve as a legal advisor to the Risk Manager and State Claims Board on all such claims. In any suit brought under the State Tort Claims Act, service of process shall be made in the manner provided for service of a summons in section 25-510.02.

**Source:** Laws 1969, c. 756, § 4, p. 2847; Laws 1972, LB 1334, § 5; Laws 1981, LB 273, § 17; Laws 1983, LB 447, § 98; Laws 1984, LB 1028, § 2; Laws 1988, LB 864, § 22; Laws 1989, LB 541, § 3; Laws 2008, LB821, § 3.

The filing requirement in this section is a condition precedent to the commencement of a suit, but not a jurisdictional prerequisite for the adjudication of a tort claim against the State. *Cole v. Isherwood*, 264 Neb. 985, 653 N.W.2d 821 (2002).

When the Legislature has waived the state's sovereign immunity as to a particular cause of action and has designated a

person or official as the agent of the state upon whom summons may be served, that person or official validly may enter a voluntary appearance for the state, thereby waiving the issue of in personam jurisdiction. To the extent that *Anstine v. State*, 137 Neb. 148, 288 N.W. 525 (1939), conflicts with this holding, it is overruled. *Pointer v. State*, 219 Neb. 315, 363 N.W.2d 164 (1985).

**81-8,213 Suit; final disposition by Risk Manager or State Claims Board required; exception.**

No suit shall be permitted under the State Tort Claims Act unless the Risk Manager or State Claims Board has made final disposition of the claim, except that if the Risk Manager or board does not make final disposition of a claim within six months after the claim is made in writing and filed with the Risk Manager in the manner prescribed by the board, the claimant may, by notice in writing, withdraw the claim from consideration of the Risk Manager or board and begin suit under such act.

**Source:** Laws 1969, c. 756, § 5, p. 2847; Laws 1988, LB 864, § 23; Laws 2008, LB821, § 4.

The final disposition requirement in this section is a condition precedent to the commencement of a suit, but not a jurisdictional prerequisite for the adjudication of a tort claim against the State. *Cole v. Isherwood*, 264 Neb. 985, 653 N.W.2d 821 (2002).

A claimant who files a tort claim with the Risk Manager of the State Claims Board 18 months or more after his or her claim has accrued, but within 2 years as provided in subsection (1) of section 81-8,227, has 6 months to file suit from the date the board gives written notice to the claimant as to the final disposi-

tion of the claim. *Collins v. State*, 264 Neb. 267, 646 N.W.2d 618 (2002).

A claimant who files a tort claim with the Risk Manager of the State Claims Board 18 months or more after his or her claim has accrued, but within the 2-year statute of limitations, has 6 months from the first day on which the claim may be withdrawn from the claims board in which to begin suit. *Coleman v. Chadron State College*, 237 Neb. 491, 466 N.W.2d 526 (1991).

**81-8,214 District court; jurisdiction; venue.**

The district court, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any suit or tort claim. Suits shall be

brought in the district court of the county in which the act or omission complained of occurred or, if the act or omission occurred outside the boundaries of the State of Nebraska, in the district court for Lancaster County.

**Source:** Laws 1969, c. 756, § 6, p. 2847; Laws 1988, LB 864, § 24.

The first sentence of this section relates to jurisdiction; the second sentence indicates the place of venue. *Blitzkie v. State*, 228 Neb. 409, 422 N.W.2d 773 (1988).

The findings of fact of the trial court in a proceeding under the State Tort Claims Act have the effect of jury findings and will not be disturbed on appeal unless they are clearly wrong. *McMullin Transfer v. State*, 225 Neb. 109, 402 N.W.2d 878 (1987).

Judicial findings of fact have the same force and effect as a jury finding of fact. *Oldenburg v. State*, 221 Neb. 1, 374 N.W.2d 341 (1985).

The State Tort Claims Act requires that actions of this nature be heard without a jury but otherwise determined in the same manner as other suits. The action is similar to a law action in which a jury has been waived and is governed by the same rules. *Saporta v. State*, 220 Neb. 142, 368 N.W.2d 783 (1985).

The county in which the act or omission occurred means the site where the wrongful conduct actually takes place, not where

the results of the wrongful conduct take place or occur. *Wickersham v. State*, 218 Neb. 175, 354 N.W.2d 134 (1984).

On an appeal to the Nebraska Supreme Court of an action under the State Tort Claims Act, the findings of the trial court will not be disturbed unless clearly wrong. *Wakenight v. State*, 212 Neb. 798, 326 N.W.2d 52 (1982).

The action must be brought in the county where the act or omission occurred. The statutory provisions authorizing the transfer of an action where the venue was improper are not applicable to suits under the State Tort Claims Act. *Miller v. State*, 208 Neb. 170, 302 N.W.2d 692 (1981).

An action against the state or a state agency is governed by this section only. *Catania v. The University of Nebraska*, 204 Neb. 304, 282 N.W.2d 27 (1979).

Jurisdiction to hear tort claims filed against the state, including tort actions by prison inmates against state officials seeking monetary damages, is specifically vested in the district court. *Pratt v. Clarke*, 8 Neb. App. 199, 590 N.W.2d 426 (1999).

### 81-8,215 Liability of state.

In all suits brought under the State Tort Claims Act, the state shall be liable in the same manner and to the same extent as a private individual under like circumstances, except that no writ of execution shall issue, and the disposition of or offer to settle any claim made under such act shall not be competent evidence of liability of the state or any employee of the state or the amount of damages.

**Source:** Laws 1969, c. 756, § 7, p. 2847; Laws 1988, LB 864, § 25; Laws 1989, LB 541, § 4.

Statutes that purport to waive the State's sovereign immunity must be clear in their intent. They are strictly construed in favor of the sovereign and against the waiver. *Woollen v. State*, 256 Neb. 865, 593 N.W.2d 729 (1999).

The State Tort Claims Act requires that actions of this nature be heard without a jury but otherwise determined in the same manner as other suits. The action is similar to a law action in which a jury has been waived and is governed by the same rules. *Saporta v. State*, 220 Neb. 142, 368 N.W.2d 783 (1985).

Demurrers were properly sustained to petitions alleging negligence by state cancer research institute in hiring a paroled felon, in failing to control his access to a poisonous drug, in

failing to maintain an inventory of the drug, and in exposing him to information about past criminal use of the drug, because such allegations did not allow conclusion that the negligent acts were the proximate cause of the employee's use of stolen quantities of the drug to poison plaintiffs' decedents, where it is not alleged that the institute should have realized the likelihood of the employee's criminal acts. *Shelton v. Board of Regents*, 211 Neb. 820, 320 N.W.2d 748 (1982).

The State Tort Claims Act provides for liability of the state the same as a private person under like circumstances. *Cortes v. State*, 191 Neb. 795, 218 N.W.2d 214 (1974).

### 81-8,215.01 Vehicular pursuit by law enforcement officer; liability to third parties; reimbursement.

(1) In case of death, injury, or property damage to any innocent third party proximately caused by the action of a law enforcement officer employed by the state during vehicular pursuit, damages shall be paid to such third party by the state employing the officer.

(2) Upon payment by the state of those damages sustained by an innocent third party, whether upon voluntary settlement or in satisfaction of a judgment, the state shall be entitled to reimbursement of the amount of damages paid by the state from each and all of the following sources:

(a) The driver of the fleeing vehicle;

(b) Any organization, including a sole proprietorship, partnership, limited liability company, or corporation, liable for the conduct of the driver of the fleeing vehicle;

(c) Every insurer or self-insurance surety of either the driver of the fleeing vehicle or any organization, including a sole proprietorship, partnership, limited liability company, or corporation, liable for the conduct of the driver of the fleeing vehicle, except that no such insurer or self-insurance surety shall be required to pay in excess of the liability limit of its applicable policies or bonds;

(d) Any uninsured or underinsured motorist insurer or self-insurance surety legally liable to the innocent third party, except that the sum recoverable from such insurer or self-insurance surety shall not exceed the highest limit of liability determined in accord with the Uninsured and Underinsured Motorist Insurance Coverage Act; and

(e) Any political subdivision employing law enforcement officers whose actions contributed to the proximate cause of death, injury, or property damage sustained by the innocent third party, except that the liability of any such political subdivision shall not exceed the lesser of (i) its maximum statutory liability pursuant to the Political Subdivisions Tort Claims Act or (ii) the damages sustained by the innocent third party apportioned equally among the state and all political subdivisions employing law enforcement officers whose actions contributed to the proximate cause of the death, injury, or property damage sustained by the innocent third party.

(3) This section shall not relieve any public or private source required statutorily or contractually to pay benefits for disability or loss of earned income or medical expenses of the duty to pay such benefits when due. No such source of payment shall have any right of subrogation or contribution against the state.

(4) This section shall be considered part of the State Tort Claims Act and all provisions of the act apply.

(5) For purposes of this section, vehicular pursuit means an active attempt by a law enforcement officer operating a motor vehicle to apprehend one or more occupants of another motor vehicle when the driver of the fleeing vehicle is or should be aware of such attempt and is resisting apprehension by maintaining or increasing his or her speed, ignoring the officer, or attempting to elude the officer while driving at speeds in excess of those reasonable and proper under the conditions.

**Source:** Laws 1984, LB 590, § 4; Laws 1988, LB 864, § 26; Laws 1996, LB 952, § 4.

#### Cross References

**Political Subdivisions Tort Claims Act**, see section 13-901.

**Uninsured and Underinsured Motorist Insurance Coverage Act**, see section 44-6401.

The actions of a law enforcement officer during a vehicular pursuit need to be merely a proximate cause of the damage, and not the sole proximate cause. *Meyer v. State*, 264 Neb. 545, 650 N.W.2d 459 (2002).

This section creates strict liability on the part of the State when a claimant suffers death or injury which is proximately caused by the actions of a pursuing law enforcement officer and the claimant is an innocent third party. *Meyer v. State*, 264 Neb. 545, 650 N.W.2d 459 (2002).

The language of this section makes the pursuee's conduct merely a factual circumstance that must be proved in order to establish that a vehicular pursuit occurred. It is not part of a proximate cause analysis. *Adams v. State*, 261 Neb. 680, 625 N.W.2d 190 (2001).

This section does not create on the part of the State a secondary liability derived from the pursuee's liability during a vehicular pursuit; rather, it creates a primary liability based on the actions of officers the State employs. *Adams v. State*, 261 Neb. 680, 625 N.W.2d 190 (2001).

### **81-8,216 Rules of civil procedure; costs; judgment; appeal.**

In all suits brought under the State Tort Claims Act, the district courts shall follow the rules of civil procedure applicable to private litigants, and costs shall

be allowed in all courts to the successful claimant to the same extent as if the state was a private litigant. Judgments shall be subject to appeal in the same manner as other judgments of the district court.

**Source:** Laws 1969, c. 756, § 8, p. 2848; Laws 1988, LB 864, § 27; Laws 1991, LB 732, § 148.

As part of the civil procedure applicable to suits brought under the State Tort Claims Act, a district court is authorized, under appropriate circumstances, to change the venue of the proceedings or otherwise transfer the site for trial. *Blitzkie v. State*, 228 Neb. 409, 422 N.W.2d 773 (1988).

#### **81-8,217 Judgment; effect.**

Final judgment in any suit under the State Tort Claims Act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the state whose act or omission gave rise to the claim. This section shall not apply if the court rules that the claim is not permitted under the State Tort Claims Act.

**Source:** Laws 1969, c. 756, § 9, p. 2848; Laws 1988, LB 864, § 28.

#### **81-8,218 Attorney General; authority.**

The Attorney General shall represent the state and employees of the state in any suit brought under the State Tort Claims Act and is authorized to compromise or settle any such suit with the approval of the court in which such suit is pending.

**Source:** Laws 1969, c. 756, § 10, p. 2848; Laws 1988, LB 864, § 29; Laws 1989, LB 541, § 5.

#### **81-8,219 State Tort Claims Act; claims exempt.**

The State Tort Claims Act shall not apply to:

(1) Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute, rule, or regulation, whether or not such statute, rule, or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion is abused;

(2) Any claim arising with respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer;

(3) Any claim for damages caused by the imposition or establishment of a quarantine by the state whether such quarantine relates to persons or property;

(4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(5) Any claim by an employee of the state which is covered by the Nebraska Workers' Compensation Act;

(6) Any claim based on activities of the Nebraska National Guard when such claim is cognizable under the Federal Tort Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims Act of the United States, 32 U.S.C. 715, or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(7) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to the state to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the state had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(8) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Such claim shall also not be filed against a state employee acting within the scope of his or her office. Nothing in this subdivision shall be construed to limit the state's liability for any claim based upon the negligent execution by a state employee in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any governmental entity in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other state-owned public place due to weather conditions. Nothing in this subdivision shall be construed to limit the state's liability for any claim arising out of the operation of a motor vehicle by an employee of the state while acting within the course and scope of his or her employment by the state;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. The state shall be deemed to waive its immunity for a claim due to a spot or localized defect only if the state has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim;

(13)(a) Any claim relating to recreational activities on property leased, owned, or controlled by the state for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably

and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, the state shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the state only to the extent the state retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (7) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the state and used for recreational activities; or

(14) Any claim arising as a result of a special event during a period of time specified in a notice provided by a political subdivision pursuant to subsection (3) of section 39-1359.

**Source:** Laws 1969, c. 756, § 11, p. 2848; Laws 1971, LB 28, § 5; Laws 1986, LB 811, § 142; Laws 1988, LB 864, § 30; Laws 1992, LB 262, § 11; Laws 1993, LB 370, § 482; Laws 1993, LB 170, § 9; Laws 1999, LB 228, § 2; Laws 2004, LB 560, § 44; Laws 2005, LB 276, § 111; Laws 2007, LB564, § 4; Laws 2011, LB589, § 5.

#### Cross References

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**State Boat Act**, see section 37-1201.

1. Discretionary function
2. Misrepresentations
3. Highways and roads
4. Miscellaneous

#### 1. Discretionary function

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning a sight-restricted railroad crossing at which a collision occurred because neither the State nor the county had any mandatory legal duty to improve any sight restrictions at the crossing. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the

crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a failure-to-warn claim concerning a sight-restricted railroad crossing; neither the State of Nebraska nor Cass County had a nondiscretionary duty to warn where the truck wash facility alleged to be the cause of the sight restriction was built by a private party on private property and was readily apparent to a motorist approaching the crossing. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

The discretionary function exception is expressed in nearly identical language in the State Tort Claims Act and the Political Subdivisions Tort Claims Act; thus, cases construing the state exception apply as well to the exception granted to political subdivisions. *Lawry v. County of Sarpy*, 254 Neb. 193, 575 N.W.2d 605 (1998).

Pursuant to subdivision (1)(a) of this section, applicability of the discretionary function exception of the State Tort Claims Act depends on the conduct in question, not on the identity of the actor. *Security Inv. Co. v. State*, 231 Neb. 536, 437 N.W.2d 439 (1989).

Pursuant to subdivision (1)(a) of this section, judgment or choice is essential and indispensable for discretionary conduct excepted from liability under the State Tort Claims Act. The discretionary function exception protects or excepts only governmental decision, action, or conduct based on a permissible exercise of a public policy judgment. The discretionary function exception is inapplicable to a claim under the act if a statute, regulation, or policy specifically prescribes a course of governmental action or conduct. *Security Inv. Co. v. State*, 231 Neb. 536, 437 N.W.2d 439 (1989).

The discretionary function or duty exemption in the State Tort Claims Act extends only to the basic policy decisions made in governmental activity, and not to ministerial activities implementing such policy decisions. *Wickersham v. State*, 218 Neb. 175, 354 N.W.2d 134 (1984).

## 2. Misrepresentations

Where the gravamen of the complaint is the negligent performance of operational tasks rather than misrepresentation, the state cannot rely upon the misrepresentation exclusion. *Wickersham v. State*, 218 Neb. 175, 354 N.W.2d 134 (1984).

## 3. Highways and roads

Under subsection (9) of this section, the State is immune from liability against allegations of a malfunctioning traffic signal unless the malfunction was not corrected by the State within a reasonable time after it received actual or constructive notice of the problem. *Fickle v. State*, 273 Neb. 990, 735 N.W.2d 754 (2007).

Pursuant to subsection (10) of this section, the State was not immune from suit when the defective condition of a highway, rather than a temporary condition caused by nature such as weather conditions, was proved as a proximate cause of an

automobile accident. *Woollen v. State*, 256 Neb. 865, 593 N.W.2d 729 (1999).

The duty to use reasonable and ordinary care in the construction, maintenance, and repair of highways and bridges so that they will be reasonably safe for the traveler using them while in the exercise of reasonable and ordinary prudence has now been imposed under both the State Tort Claims Act and the Political Subdivisions Tort Claims Act. *Hendrickson v. City of Kearney*, 210 Neb. 8, 312 N.W.2d 677 (1981).

The state has the duty to use ordinary and reasonable care in the construction, maintenance, and repair of its highways including the shoulders of a paved or hard-surfaced highway. *Richardson & Gillispie v. State*, 200 Neb. 225, 263 N.W.2d 442 (1978).

A claim that the State failed to warn of a condition of the road resulting from rain "arises out of" a condition of the road due to weather conditions as meant by subsection (10) of this section. As a result, the State has not waived its sovereign immunity regarding such a claim. *Hammond v. Nemaha Cty.*, 7 Neb. App. 124, 581 N.W.2d 82 (1998).

## 4. Miscellaneous

Under subsection (4) of this section, the State has not waived its sovereign immunity for claims of fraudulent concealment. *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010).

Where a plaintiff's tort claim is based on the mere fact of government employment or on the employment relationship between the intentional tort-feasor and the government, the exception applies and the State is immune from suit. *Johnson v. State*, 270 Neb. 316, 700 N.W.2d 620 (2005).

The exceptions to the general waiver of tort immunity provided for in the State Tort Claims Act are matters of defense which must be pled and proved by the State. *Sherrod v. State Dept. of Correctional Services*, 251 Neb. 355, 557 N.W.2d 634 (1997).

A defendant may affirmatively plead that the plaintiff has failed to state a cause of action under this section because an exception to the waiver of sovereign immunity applies. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

Even though this section has been amended in 1993, 1999, 2004, 2005, and 2007, claims for invasion of privacy are still not among those claims for which sovereign immunity provides protection for State employees or officers. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

## 81-8,220 State Claims Board; members; legal advisor; hire secretary; expenses.

The Director of Insurance, Commissioner of Labor, and Director of Administrative Services shall constitute the State Claims Board which shall be a part of the Risk Management Program created by section 81-8,239.01. The Attorney General shall be its legal advisor. With the advice and consent of the other members of the board, the Director of Administrative Services may hire a secretary for the board. The members of the board shall receive no compensation for their services except that provided by law for the offices they hold, but they shall be allowed necessary traveling expenses in performing their duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1943, c. 129, § 1, p. 432; R.S.1943, § 81-857; Laws 1969, c. 756, § 12, p. 2849; Laws 1972, LB 1334, § 6; Laws 1981, LB 204, § 185; Laws 1981, LB 273, § 18; Laws 1988, LB 864, § 31; Laws 1992, Third Spec. Sess., LB 14, § 6; Laws 2008, LB821, § 5.

### Cross References

**Other provisions for claims against state**, see sections 81-8,294 to 81-8,306 and 81-1170.01 to 81-1170.05.

**Presentment of warrants issued more than two years**, see section 77-2205.

**81-8,221 State Claims Board; rules and regulations; adopt.**

The State Claims Board shall adopt and promulgate such rules and regulations as are necessary to carry out the State Tort Claims Act.

**Source:** Laws 1969, c. 756, § 13, p. 2850; Laws 1988, LB 864, § 32.

**81-8,222 Department of Justice; Claims Division; assistant attorney general; duties.**

There is hereby established within the Department of Justice a Claims Division to be headed by an assistant attorney general appointed by and under the control of the Attorney General. The Attorney General may authorize the assistant attorney general in charge of the Claims Division to perform any of the duties imposed upon the Attorney General by the State Tort Claims Act and may employ other persons, firms, or corporations to investigate claims under the act.

**Source:** Laws 1969, c. 756, § 14, p. 2850; Laws 1988, LB 864, § 33.

**81-8,223 Award; acceptance; effect.**

Any award made under the State Tort Claims Act and accepted by the claimant shall be final and conclusive on all officers of the State of Nebraska except when procured by means of fraud. The acceptance by the claimant of such award shall be final and conclusive on the claimant and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim by reason of the same subject matter.

**Source:** Laws 1969, c. 756, § 15, p. 2850; Laws 1988, LB 864, § 34.

**81-8,224 Award; certification; payment; review, when.**

(1) Any award to a claimant and any judgment in favor of a claimant under the State Tort Claims Act shall be certified by the Risk Manager or State Claims Board to the Director of Administrative Services who shall promptly issue a warrant for payment of such award or judgment out of the Tort Claims Fund or State Insurance Fund, as appropriate, if sufficient money is available in the fund, except that no portion in excess of fifty thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. All awards and judgments which arise out of the same facts and circumstances shall be aggregated for the purpose of determining whether such awards and judgments shall be reviewed by the Legislature and specific appropriation made therefor.

(2) Any award, judgment, or associated costs on a claim which is covered by liability insurance or by group self-insurance, the amount of which falls within the applicable policy's self-insured retention, shall be paid from the State Insurance Fund.

(3) Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written release by the claimant in a form approved by the State Claims Board.

**Source:** Laws 1969, c. 756, § 16, p. 2850; Laws 1984, LB 1028, § 3; Laws 1988, LB 864, § 35; Laws 2005, LB 485, § 2; Laws 2008, LB821, § 6.

**81-8,225 Tort Claims Fund; established; amount; investment; appropriation.**

There is hereby established in the state treasury a Tort Claims Fund from which awards, judgments, and associated costs under the State Tort Claims Act may be paid, including appeal bonds or the reasonable costs associated with a required appearance before any tribunal. This fund shall be in such amount as the Legislature determines 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 such act, the Risk Manager 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 1969, c. 756, § 17, p. 2850; Laws 1971, LB 53, § 3; Laws 1981, LB 273, § 19; Laws 1988, LB 864, § 36; Laws 1995, LB 7, § 111; Laws 2005, LB 485, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-8,226 Report to Clerk of the Legislature; contents.**

The Risk Manager shall report electronically to the Clerk of the Legislature all claims and judgments paid under the State Tort Claims Act. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim including the agency and program or activity under which the claim arose. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the Risk Manager.

**Source:** Laws 1969, c. 756, § 18, p. 2851; Laws 1972, LB 1334, § 7; Laws 1979, LB 322, § 44; Laws 1981, LB 273, § 20; Laws 1988, LB 864, § 37; Laws 2012, LB782, § 174.

**81-8,227 Tort claim; limitation of action.**

(1) Except as provided in subsection (2) of this section, every tort claim permitted under the State Tort Claims Act shall be forever barred unless within two years after such claim accrued the claim is made in writing to the Risk Manager in the manner provided by such act. The time to begin suit under such act shall be extended for a period of six months from the date of mailing of notice to the claimant by the Risk Manager or State Claims Board as to the final disposition of the claim or from the date of withdrawal of the claim under section 81-8,213 if the time to begin suit would otherwise expire before the end of such period.

(2) The date of a qualifying pardon from the Board of Pardons, a final order by a court vacating a conviction, or a conviction that was reversed and remanded for a new trial and no subsequent conviction was obtained, whichever is later, shall be the date the claimant's claim shall accrue under the Nebraska Claims for Wrongful Conviction and Imprisonment Act for purposes of complying with the notice and filing requirements of the State Tort Claims Act. The Nebraska Claims for Wrongful Conviction and Imprisonment Act applies to a claimant who would have had a claim if the act had been in effect before August 30, 2009, or who has a claim on or after such date. If a claimant

had a qualifying pardon from the Board of Pardons, a final order by a court vacating a conviction, or a conviction that was reversed and remanded for a new trial and no subsequent conviction was obtained, before August 30, 2009, the claimant's claim shall accrue under the Nebraska Claims for Wrongful Conviction and Imprisonment Act on August 30, 2009, for purposes of complying with the notice and filing requirements of the State Tort Claims Act.

(3) If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that the State Tort Claims Act provides the exclusive remedy for the claim, the time to make a claim and begin suit under such act shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency if the time to make the claim and to begin suit under such act would otherwise expire before the end of such period. The time to begin a suit under such act may be further extended as provided in subsection (1) of this section.

(4) If a claim is brought under the Nebraska Hospital-Medical Liability Act, the filing of a request for review under section 44-2840 shall extend the time to begin suit under the State Tort Claims Act an additional ninety days following the issuance of the opinion by the medical review panel if the time to begin suit under the State Tort Claims Act would otherwise expire before the end of such ninety-day period.

(5) This section and section 25-213 shall constitute the only statutes of limitations applicable to the State Tort Claims Act.

**Source:** Laws 1969, c. 756, § 19, p. 2851; Laws 1974, LB 949, § 3; Laws 1984, LB 692, § 21; Laws 1988, LB 864, § 38; Laws 2008, LB821, § 7; Laws 2009, LB260, § 11.

#### Cross References

**Nebraska Claims for Wrongful Conviction and Imprisonment Act**, see section 29-4601.

**Nebraska Hospital-Medical Liability Act**, see section 44-2855.

The beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, an injury within the initial period of limitations running from the wrongful act or omission. *Carruth v. State*, 271 Neb. 433, 712 N.W.2d 575 (2006).

A claimant who files a tort claim with the Risk Manager of the State Claims Board 18 months or more after his or her claim has accrued, but within 2 years as provided in subsection (1) of this section, has 6 months to file suit from the date the board gives written notice to the claimant as to the final disposition of the claim. *Collins v. State*, 264 Neb. 267, 646 N.W.2d 618 (2002).

The discovery rule is applicable to the State Tort Claims Act, and in a case in which the plaintiff cannot reasonably become aware of the injury at the time of the act or omission, the discovery rule applies, and the period of limitations under the State Tort Claims Act begins to run when a potential plaintiff discovers, or in the exercise of reasonable diligence should discover, the existence of the injury. *Shlien v. Board of Regents*, 263 Neb. 465, 640 N.W.2d 643 (2002).

The 6-month time period contained in subsection (1) of this section is an extension of time, not a limitation, in those instances where the claimant has filed a so-called fourth-quarter claim. A claimant who files a tort claim with the State Claims Board 18 months or more after his or her claim has accrued, but within the 2-year statute of limitations, has 6 months from the date of mailing of notice by the board as to the final disposition of the claim or from the date of withdrawal of the claim, in which to begin suit. *Sharkey v. Board of Regents of Univ. of Neb.*, 260 Neb. 166, 615 N.W.2d 889 (2000).

A claimant who files a tort claim with the risk manager of the State Claims Board 18 months or more after his or her claim has accrued, but within the 2-year statute of limitations, has 6 months from the first day on which the claim may be withdrawn from the claims board in which to begin suit. There is nothing in the State Tort Claims Act which contemplates the tolling of the limitations period or the granting of an extension of the limitations period because the claims board has set a date for hearing. *Hullinger v. Board of Regents*, 249 Neb. 868, 546 N.W.2d 779 (1996).

The language "time to begin suit" as used in this section means 2 years. *Coleman v. Chadron State College*, 237 Neb. 491, 466 N.W.2d 526 (1991).

### 81-8,228 Attorney's fees; expenses; allowance.

The court rendering a judgment for the claimant under the State Tort Claims Act, the Risk Manager or State Claims Board making an award under section 81-8,211, or the Attorney General settling a claim under section 81-8,218 shall

determine and allow reasonable attorney's fees and expenses, to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant.

**Source:** Laws 1969, c. 756, § 20, p. 2852; Laws 1988, LB 864, § 39; Laws 2008, LB821, § 8.

**81-8,229 Tort claims; remedy of State Tort Claims Act; exclusive.**

From and after December 25, 1969, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on tort claims except as authorized in the State Tort Claims Act. The remedies provided by such act for tort claims and suits against the state and employees of the state shall be exclusive.

**Source:** Laws 1969, c. 756, § 21, p. 2852; Laws 1988, LB 864, § 40; Laws 1989, LB 541, § 6.

**81-8,230 State agency; payment of claims; construction of act.**

Nothing in the State Tort Claims Act shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a tort claim.

**Source:** Laws 1969, c. 756, § 22, p. 2852; Laws 1988, LB 864, § 41.

**81-8,231 Claim under act; insurance coverage; effect.**

Whenever a claim or suit under the State Tort Claims Act is covered by liability insurance or by group self-insurance provided by a risk management pool, the provisions of the liability insurance policy on defense and settlement of claims or the provisions of the agreement forming the risk management pool and related documents providing for defense and settlement of claims covered under such group self-insurance shall be applicable notwithstanding any inconsistent provisions of the act. The Attorney General and the State Claims Board shall cooperate with the insurance company or risk management pool.

**Source:** Laws 1969, c. 756, § 23, p. 2852; Laws 1987, LB 398, § 48; Laws 1988, LB 864, § 42; Laws 1989, LB 541, § 7.

**Cross References**

**Risk management pool**, defined, see section 44-4303.

**81-8,232 Action against employee; act or omission of employee.**

Nothing in the State Tort Claims Act shall be construed to prevent the state from bringing an action for recovery from an employee of the state when the state has made payment of an award or settlement growing out of the employee's act or omission under the State Tort Claims Act.

**Source:** Laws 1969, c. 756, § 24, p. 2852; Laws 1988, LB 864, § 43.

**81-8,233 Employee; report property damage, injury, or death; cooperation in investigation.**

When any employee is involved in any occurrence involving damage to or loss of property or personal injury or death, such employee as soon as practicable shall report full information on such occurrence to the head of the agency by which he or she is employed. The head of the agency shall furnish

immediately all available information on such occurrence to the Risk Manager. All employees shall cooperate fully with the Attorney General in the investigation of all tort claims. Failure to comply with the provisions of this section shall constitute grounds for dismissal from employment.

**Source:** Laws 1969, c. 756, § 25, p. 2852; Laws 1972, LB 1334, § 8; Laws 1981, LB 273, § 21.

**81-8,234 Skatepark and bicycle motocross park; sign required; warning notice.**

(1) The state shall post and maintain a sign at each skatepark and bicycle motocross park sponsored by the state containing the following warning notice: Under Nebraska law, the state is not liable for an injury to or the death of a participant in recreational activities resulting from the inherent risks of the recreational activities pursuant to section 81-8,219.

(2) The absence of a sign shall not give rise to liability on the part of the state.

**Source:** Laws 2007, LB564, § 5.

**81-8,235 Act, how cited.**

Sections 81-8,209 to 81-8,235 shall be known and may be cited as the State Tort Claims Act.

**Source:** Laws 1969, c. 756, § 27, p. 2853; Laws 1984, LB 590, § 3; Laws 2007, LB564, § 6.

**81-8,236 Repealed. Laws 1988, LB 864, § 72.**

**81-8,237 Transferred to section 81-8,298.**

**81-8,238 Transferred to section 81-8,299.**

**81-8,239 Transferred to section 81-8,300.**

**81-8,239.01 Risk Management Program; risk management and state claims division of the Department of Administrative Services; established; Risk Manager; powers and duties.**

(1) For purposes of sections 81-8,239.01 to 81-8,239.08 and 81-8,239.11, unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a division within the Department of Administrative Services to be known as the risk management and state claims division. The division shall be headed by the Risk Manager who shall be appointed by the Director of Administrative Services. The division shall be responsible for the Risk Management Program, which program is hereby created. The program shall consist of the systematic identification of exposures to risk of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165, 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.08, 81-8,239.11, 81-8,300, and 81-1801.02 and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to such sections. Such program shall be administered by the Risk Manager and shall include the

operations of the State Claims Board and other operations provided in such sections.

(3) Under the Risk Management Program, the Risk Manager shall have the authority and responsibility to:

(a) Employ any personnel necessary to administer the Risk Management Program;

(b) Develop and maintain loss and exposure data on all state property and liability risks;

(c) Develop and recommend risk reduction or elimination programs for the state and its agencies and establish, implement, and monitor a statewide safety program;

(d) Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state;

(e) Establish standards for the purchase of necessary insurance coverage or risk management services at the lowest costs, consistent with good underwriting practices and sound risk management techniques;

(f) Be the exclusive negotiating and contracting agency to purchase insurance or risk management services and, after consultation with the state agency for which the insurance or services are purchased, enter into such contracts on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and authorize payment for such purchase out of the appropriate funds created by section 81-8,239.02;

(g) Determine whether the state suffered a loss for which self-insured property loss funds have been created and authorize and administer payments for such loss from the State Self-Insured Property Fund for the purpose of replacing or rebuilding state property;

(h) Perform all duties assigned to the Risk Manager under the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 81-8,239.05, 81-8,239.07, 81-8,239.11, and 84-1601 to 84-1615;

(i) Approve the use of risk management pools by any department, agency, board, bureau, commission, or council of the State of Nebraska; and

(j) Recommend to the Legislature such legislation as may be necessary to carry out the purposes of the Risk Management Program and make appropriation requests for the administration of the program and the funding of the separate funds administered by the Risk Manager.

(4) No official or employee of any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act shall be considered a state official or employee for purposes of sections 81-8,239.01 to 81-8,239.06.

**Source:** Laws 1981, LB 273, § 23; Laws 1986, LB 811, § 143; Laws 1986, LB 1208, § 1; Laws 1987, LB 398, § 49; Laws 1989, LB 326, § 2; Laws 1989, LB 77, § 1; Laws 1989, LB 303, § 7; Laws 1991, LB 81, § 7; Laws 1992, LB 169, § 3; Laws 1992, LB 560, § 2; Laws 1992, Third Spec. Sess., LB 14, § 7; Laws 1996, LB 1248, § 2; Laws 1996, LB 1252, § 1; Laws 1999, LB 87, § 93; Laws 2001, LB 3, § 1; Laws 2007, LB256, § 6; Laws 2011, LB390, § 15.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Workers' Compensation Act, see section 48-1,110.

**81-8,239.02 State Insurance Fund; State Self-Insured Property Fund; State Self-Insured Indemnification Fund; State Self-Insured Liability Fund; created; purposes; report.**

The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees are exposed and for paying related expenses, including the costs of administering the Risk Management Program. The fund may receive deposits from assessments against state agencies to provide insurance coverage as directed by the Risk Manager. The Risk Manager may retain in the fund sufficient money to pay for any deductibles, self-insured retentions, or copayments as may be required by such insurance policies and Risk Management Program expenses;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide property coverage as directed by the Risk Manager. The Risk Manager may assess state agencies to provide self-insured property coverage;

(3) The State Self-Insured Indemnification Fund is hereby created for the purpose of paying indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The fund may receive deposits from assessments against state agencies to pay for the costs associated with providing and supporting indemnification claims. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees; and

(4) The State Self-Insured Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for which there is insufficient agency funding and for which a legislative appropriation is made under the provisions of section 81-8,239.11. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees. The Risk Manager shall report electronically all claims and judgments paid from the State Self-Insured Liability Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive an electronic copy of the report by making a request to the Risk Manager.

**Source:** Laws 1981, LB 273, § 24; Laws 1986, LB 811, § 144; Laws 1986, LB 1208, § 2; Laws 1989, LB 77, § 2; Laws 1994, LB 1211, § 4;

Laws 1996, LB 1248, § 3; Laws 2001, LB 3, § 2; Laws 2005, LB 485, § 4; Laws 2007, LB256, § 8; Laws 2011, LB378, § 25; Laws 2012, LB782, § 175.

**81-8,239.03 Risk Manager; present budget request; contents; deficiency appropriation; procedure; investment.**

The Risk Manager shall present a budget request as provided in section 81-1113 for the Risk Management Program which shall separately state the amount requested for the Tort Claims Fund, State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, and Workers' Compensation Claims Revolving Fund, and such budget shall be based on the projected needs for such funds. If the Risk Manager does not assess state agencies for any of the funds listed in this section, the amount of expenditures paid from the fund on behalf of any non-general-fund agency shall be separately stated and paid into the funds from an appropriation to such non-general-fund agency. If the amount of money in any of such funds is not sufficient to pay any awards or judgments authorized by sections 48-192 to 48-1,109 or the State Tort Claims Act, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in such funds 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 1981, LB 273, § 25; Laws 1986, LB 811, § 145; Laws 1988, LB 864, § 57; Laws 1994, LB 1211, § 5; Laws 1995, LB 7, § 112; Laws 2007, LB256, § 9.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

State Tort Claims Act, see section 81-8,235.

**81-8,239.04 Money or property recovered by state; disposition.**

All money or property recovered by or returned to the state, including but not limited to dividends, money recovered pursuant to litigation, or the salvage value of damaged property for damages relating to either a liability or property loss for which money from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, State Self-Insured Liability Fund, Workers' Compensation Claims Revolving Fund, or Tort Claims Fund has been paid, shall be deposited in the respective fund, except that such money or property recovered under the terms of an insurance policy, the premiums for which were paid solely by a cash fund agency and purchased at its request, shall be deposited in the respective cash fund.

**Source:** Laws 1981, LB 273, § 26; Laws 1986, LB 811, § 146; Laws 1994, LB 1211, § 6; Laws 2007, LB256, § 10.

**81-8,239.05 Indemnification of state officials and employees; when; Attorney General; duties; report.**

(1) The State of Nebraska shall indemnify its officials and employees and its past officials and employees for money damages and reasonable costs incurred as a result of an act or omission occurring in the course and scope of employment of such official or employee after May 22, 1981. Such official's or

employee's right to indemnification shall include the payments of awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal.

(2) Subsection (1) of this section shall not apply in case of malfeasance in office or willful or wanton neglect of duty. This section shall not be interpreted as an expansion of any state official's or employee's personal liability.

(3) The Attorney General shall notify the Risk Manager when an official or employee is being represented by the Attorney General or has engaged competent counsel approved by the Attorney General. The reasonable costs of litigation, including appeal bonds, or the reasonable costs of any appearance before any tribunal shall be paid by the Risk Manager from the State Self-Insured Indemnification Fund.

(4) The Attorney General shall file copies of all awards and settlements and any final court approval with the Risk Manager and shall request that the Risk Manager make the required payments, if funds are available, from the State Self-Insured Indemnification Fund, except that any portion of an award or settlement which is for punitive damages may only be paid with the approval of the Legislature. The official or employee may file a claim under the State Miscellaneous Claims Act if payment is not made.

(5) The Risk Manager shall report electronically all claims and judgments paid from the State Self-Insured Indemnification Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive an electronic copy of the report by making a request to the Risk Manager.

**Source:** Laws 1981, LB 273, § 27; Laws 1986, LB 1208, § 3; Laws 1989, LB 77, § 3; Laws 2007, LB256, § 11; Laws 2012, LB782, § 176.

#### Cross References

State Miscellaneous Claims Act, see section 81-8,294.

### **81-8,239.06 Civil action against state officer or employee; Attorney General; represent; cooperation required; payment for defense; when required.**

(1) If any civil action is brought against any state officer or employee, such state official or employee may file a written request for counsel with the Attorney General asserting that such civil action is based in fact upon an alleged act or omission in the course and scope of employment. If any state officer or employee is requested to appear before a tribunal and the state may have an interest, such state official or employee may file a written request for representation at the tribunal by the Attorney General asserting that the request to appear is based upon an alleged act or omission in the course and scope of employment. The Attorney General shall thereupon appear and defend or represent that person unless after investigation he or she finds that the claim or demand does not arise out of an alleged act or omission occurring in the course and scope of employment or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall give that person written notice that defense of the claim or representation before the tribunal has been rejected.

(2) Any official or employee of the state against whom a claim is made or of whom an appearance is requested, which is not rejected by the Attorney General pursuant to subsection (1) of this section, shall cooperate fully with the Attorney General in the defense of such claim or in the appearance. If the Attorney General determines that such official or employee has not cooperated or has otherwise acted to prejudice the defense of the claim or the appearance, the Attorney General may at any time reject the defense of the claim or representation before the tribunal.

(3) If the Attorney General rejects the defense of a claim pursuant to subsection (1) of this section or if it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the course or scope of employment or amounted to willful or wanton neglect of duty, no public money shall be paid in settlement of such claim or in payment of any judgment against such official or employee. Such action by the Attorney General shall not prejudice the right of the state official or employee to assert and establish as a defense that the claim arose out of an alleged act or omission occurring in the course and scope of employment or that the act or omission complained of did not amount to malfeasance in office or willful wanton neglect of duty. If the official or employee is successful in asserting such defense, he or she shall be indemnified for the reasonable costs of defending the claim.

(4) If a state official or employee has been defended by the Attorney General and it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not covered by section 81-8,239.05, the judgment against that person shall provide for payment to the state of the state's costs, including a reasonable attorney's fee.

**Source:** Laws 1981, LB 273, § 28; Laws 1986, LB 1208, § 4; Laws 1989, LB 77, § 4.

**81-8,239.07 Risk Manager; self-insure; risk management services; procure insurance; amount of protection; premium; payments.**

The Risk Manager, acting as agent for the state agencies, may (1) self-insure and contract for related risk management services, (2) purchase a liability insurance policy or policies, or (3) use any combination of self-insurance and insurance to protect the agencies and their employees and other persons authorized to operate a vehicle by an agency against loss occasioned by negligence in the operation of any trucks, automobiles, snowplows, road graders, or other vehicles. Any such policy shall be purchased by public bidding conducted by the Risk Manager upon terms and forms prepared by him or her and shall have limits for death, bodily injury, and property damage that are the same as would be required by law for a private individual. The premium on the policy or policies shall be paid by the Risk Manager from the State Insurance Fund created in section 81-8,239.02. The Risk Manager shall authorize and administer the payment of self-insured losses and payment for risk management services from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, or State Self-Insured Liability Fund as appropriate.

**Source:** Laws 1967, c. 379, § 2, p. 1190; Laws 1969, c. 756, § 32, p. 2854; Laws 1969, c. 513, § 2, p. 2102; Laws 1981, LB 273, § 16; R.S.1943, (1988), § 60-1008; Laws 1989, LB 326, § 1; Laws 2007, LB256, § 12.

This section evidences general legislative policy to accept public financial responsibility in area of automobile accidents. *Brown v. City of Omaha*, 183 Neb. 430, 160 N.W.2d 805 (1968).

**81-8,239.08 Civil action against provider of medical or dental services; Attorney General; represent; indemnification of provider.**

Any person who, at the request of the director of a state agency, provides medical or dental services to a person in the custody of the state may be represented by the Attorney General in the same manner as a state officer or employee under sections 81-8,239.05 and 81-8,239.06 in any civil action under the federal Civil Rights Act of 1871, as amended, 42 U.S.C. 1983, which arose as a result of providing such services. A person providing such services shall also be indemnified for liability for violations of civil rights in the same manner as a state officer or employee under section 81-8,239.05.

**Source:** Laws 1992, LB 560, § 1.

**81-8,239.09 Risk Management Administration Cash Fund; created; use; investment.**

There is hereby created the Risk Management Administration Cash Fund. The fund shall be administered by the Risk Manager. The fund shall consist of miscellaneous fees for services provided by the Risk Manager and shall be used to pay for expenses of the risk management and state claims program.

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 1211, § 1; Laws 1995, LB 7, § 113.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-8,239.10 Repealed. Laws 2001, LB 3, § 4.**

**81-8,239.11 Settlements and judgments; state agency; Attorney General; filing required; insufficient funds; Risk Manager; duties.**

A state agency head shall file copies of all settlements, and a state agency head or the Attorney General shall file copies of all final, nonappealable judgments, of all self-insured liability claims with the Risk Manager. If the state agency has insufficient funds to pay the settlement or judgment, the state agency shall notify the Risk Manager. The Risk Manager shall then submit the settlement or judgment to the Legislature in the same manner as provided in the State Miscellaneous Claims Act. The Legislature shall review the settlement or judgment and make an appropriation if appropriate.

**Source:** Laws 2007, LB256, § 7.

**Cross References**

State Miscellaneous Claims Act, see section 81-8,294.

(q) PUBLIC COUNSEL

**81-8,240 Terms, defined.**

As used in sections 81-8,240 to 81-8,254, unless the context otherwise requires:

(1) Administrative agency shall mean any department, board, commission, or other governmental unit, any official, any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals or service delivery, service coordination, or case management under contract with the State of Nebraska and who is subject to the jurisdiction of the office of Public Counsel as required by section 73-401, any regional behavioral health authority, any community-based behavioral health services provider that contracts with a regional behavioral health authority, and any county or municipal correctional or jail facility and employee thereof acting or purporting to act by reason of connection with the county or municipal correctional or jail facility; 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 except a county or municipal correctional or jail facility or a regional behavioral health authority, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government; and

(2) Administrative act shall include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.

**Source:** Laws 1969, c. 762, § 1, p. 2879; Laws 1997, LB 622, § 121; Laws 2008, LB467, § 1; Laws 2012, LB821, § 41.

**81-8,241 Public Counsel; established; powers and duties; appointment.**

The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254 and the Office of Inspector General of Nebraska Child Welfare Act. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

**Source:** Laws 1969, c. 762, § 2, p. 2879; Laws 2012, LB821, § 42.

**Cross References**

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

**81-8,242 Public Counsel; qualifications.**

The Public Counsel shall be a person well equipped to analyze problems of law, administration, and public policy, and during his term of office shall not be actively involved in partisan affairs. No person may serve as Public Counsel within two years of the last day on which he served as a member of the Legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

**Source:** Laws 1969, c. 762, § 3, p. 2879.

**81-8,243 Public Counsel; term; removal; vacancy; salary.**

The Public Counsel shall serve for a term of six years, unless removed by vote of two-thirds of the members of the Legislature upon their determining that he has become incapacitated or has been guilty of neglect of duty or misconduct. If the office of Public Counsel becomes vacant for any cause, the deputy public

counsel shall serve as acting public counsel until a Public Counsel has been appointed for a full term. The Public Counsel shall receive such salary as is set by the Executive Board of the Legislative Council.

**Source:** Laws 1969, c. 762, § 4, p. 2880.

**81-8,244 Public Counsel; personnel; appointment; compensation; authority; appoint Inspector General of Nebraska Child Welfare.**

(1)(a) The Public Counsel may select, appoint, and compensate as he or she sees fit, within the amount available by appropriation, such assistants and employees as he or she deems necessary to discharge the responsibilities under sections 81-8,240 to 81-8,254. He or she shall appoint and designate one assistant to be a deputy public counsel, one assistant to be a deputy public counsel for corrections, one assistant to be a deputy public counsel for institutions, and one assistant to be a deputy public counsel for welfare services.

(b) Such deputy public counsels shall be subject to the control and supervision of the Public Counsel.

(c) The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services and all county or municipal correctional or jail facilities.

(d) The authority of the deputy public counsel for institutions shall extend to all mental health and veterans institutions and facilities operated by the Department of Health and Human Services and to all regional behavioral health authorities that provide services and all community-based behavioral health services providers that contract with a regional behavioral health authority to provide services, for any individual who was a patient within the prior twelve months of a state-owned and state-operated regional center, and to all complaints pertaining to administrative acts of the department, authority, or provider when those acts are concerned with the rights and interests of individuals placed within those institutions and facilities or receiving community-based behavioral health services.

(e) The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska.

(f) The Public Counsel may delegate to members of the staff any authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

(2) The Public Counsel shall appoint the Inspector General of Nebraska Child Welfare as provided in section 43-4317. The Inspector General of Nebraska Child Welfare shall have the powers and duties provided in the Office of Inspector General of Nebraska Child Welfare Act.

**Source:** Laws 1969, c. 762, § 5, p. 2880; Laws 1976, LB 687, § 1; Laws 1994, LB 1224, § 87; Laws 2008, LB467, § 2; Laws 2012, LB821, § 43.

**Cross References**

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

**81-8,245 Public Counsel; powers; enumerated.**

The Public Counsel shall have the power to:

(1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;

(2) Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals;

(3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;

(4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;

(5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned;

(6) Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies;

(7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act;

(8) Carry out his or her duties under the Office of Inspector General of Nebraska Child Welfare Act. If any of the provisions of sections 81-8,240 to 81-8,254 conflict with provisions of the Office of Inspector General of Nebraska Child Welfare Act, the provisions of such act shall control;

(9) Investigate allegations of violation of subsection (2) of section 84-908 by an administrative agency pursuant to a complaint made to his or her office and make a determination as to whether such administrative agency has violated such subsection. The Public Counsel shall report his or her determination in writing to the Governor, the Secretary of State, the Attorney General, the Executive Board of the Legislative Council, and the director or chief executive officer of the agency. The report to the executive board shall be submitted electronically; and

(10) Investigate and address the complaint and case of:

(a) Any juvenile committed to the custody of a youth rehabilitation and treatment center; and

(b) Any juvenile released from a youth rehabilitation and treatment center for reentry into the community, while that juvenile is subject to the Community and Family Reentry Process and a service or treatment program in which the juvenile may be involved after his or her release from a youth rehabilitation and treatment center, whether that service or program is administrated by the Office of Juvenile Services or a private provider in the community. The Office of Juvenile Services and private providers in the community shall cooperate with any investigation conducted by the Public Counsel pursuant to this subdivision and provide all documentation and information requested by the Public Counsel in connection with such an investigation.

**Source:** Laws 1969, c. 762, § 6, p. 2880; Laws 1976, LB 687, § 2; Laws 1993, LB 44, § 11; Laws 2012, LB821, § 44; Laws 2013, LB242, § 1; Laws 2013, LB561, § 62.

**Cross References**

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.  
State Government Effectiveness Act, see section 81-2701.

**81-8,246 Public Counsel; particular administrative acts addressed.**

In selecting matters for his attention, the Public Counsel shall address himself particularly to an administrative act that might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's judgments;
- (3) Mistaken in law or arbitrary in ascertainments of fact;
- (4) Improper in motivation or based on irrelevant considerations;
- (5) Unclear or inadequately explained when reasons should have been revealed; or
- (6) Inefficiently performed.

The Public Counsel may concern himself also with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

**Source:** Laws 1969, c. 762, § 7, p. 2881.

**81-8,247 Public Counsel; complaint; investigation; decision; notify complainant.**

The Public Counsel may receive a complaint from any person concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that:

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (5) Other complaints are more worthy of attention;
- (6) His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar him from proceeding on his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall suitably inform the complainant and the administrative agency involved.

**Source:** Laws 1969, c. 762, § 8, p. 2882.

**81-8,248 Public Counsel; complaint; conclusion or recommendation; consult with agency or person.**

Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the Public Counsel shall consult with that agency or person.

**Source:** Laws 1969, c. 762, § 9, p. 2882.

**81-8,249 Public Counsel; agency; information; recommendations.**

(1) If, having considered a complaint and whatever material he deems pertinent, the Public Counsel is of the opinion that an administrative agency should (a) consider the matter further, (b) modify or cancel an administrative act, (c) alter a regulation or ruling, (d) explain more fully the administrative act in question, or (e) take any other step, he shall state his recommendations to the administrative agency. If the Public Counsel so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them.

(2) If the Public Counsel believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable, he shall bring to the Legislature's notice his views concerning desirable statutory change.

**Source:** Laws 1969, c. 762, § 10, p. 2882.

**81-8,250 Public Counsel; conclusions; publish; inclusions.**

The Public Counsel may publish his conclusions and suggestions by transmitting them to the Governor, the Legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency he shall include any statement the administrative agency may have made to him by way of explaining its past difficulties or its present rejection of the Public Counsel's proposals.

**Source:** Laws 1969, c. 762, § 11, p. 2883.

**81-8,251 Public Counsel; report to Clerk of the Legislature; time; contents.**

In addition to whatever reports he or she may make from time to time, the Public Counsel shall on or about February 15 of each year report to the Clerk of the Legislature and to the Governor concerning the exercise of his or her functions during the preceding calendar year. The report submitted to the Clerk of the Legislature shall be submitted electronically. In discussing matters with which he or she has dealt, the Public Counsel need not identify those immediately concerned if to do so would cause needless hardship. So far as the annual report may criticize named agencies or officials, it must include also their

replies to the criticism. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the Public Counsel.

**Source:** Laws 1969, c. 762, § 12, p. 2883; Laws 1979, LB 322, § 45; Laws 2012, LB782, § 177.

**81-8,252 Public Counsel; public officer or employee; acted to warrant criminal proceedings; refer to proper authorities.**

If the Public Counsel has reason to believe that any public officer or employee has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities.

**Source:** Laws 1969, c. 762, § 13, p. 2883.

**81-8,253 Public Counsel; proceedings, opinion, expression; not reviewable by court; not subject to testify or produce evidence.**

No proceeding, opinion, or expression of the Public Counsel shall be reviewable in any court. Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his official cognizance, except in a proceeding brought to enforce sections 81-8,240 to 81-8,254.

**Source:** Laws 1969, c. 762, § 14, p. 2883.

**81-8,254 Violations; penalty; state employee; complaint; effect.**

A person who willfully obstructs or hinders the proper exercise of the Public Counsel's functions, or who willfully misleads or attempts to mislead the Public Counsel in his inquiries, shall be guilty of a Class II misdemeanor. No employee of the State of Nebraska, who files a complaint pursuant to sections 81-8,240 to 81-8,254, shall be subject to any penalties, sanctions, or restrictions in connection with his employment because of such complaint.

**Source:** Laws 1969, c. 762, § 15, p. 2883; Laws 1977, LB 39, § 301.

(r) COMMISSION ON THE STATUS OF WOMEN

**81-8,255 Repealed. Laws 2009, LB 154, § 27.**

**81-8,256 Repealed. Laws 2009, LB 154, § 27.**

**81-8,257 Repealed. Laws 2009, LB 154, § 27.**

**81-8,258 Repealed. Laws 2009, LB 154, § 27.**

**81-8,259 Repealed. Laws 2009, LB 154, § 27.**

**81-8,260 Repealed. Laws 2009, LB 154, § 27.**

**81-8,260.01 Repealed. Laws 2009, LB 154, § 27.**

**81-8,260.02 Repealed. Laws 2009, LB 154, § 27.**

**81-8,261 Repealed. Laws 1981, LB 545, § 52.**

## (s) COMMISSION ON LATINO-AMERICANS

**81-8,262 Commission on Latino-Americans; created; term, defined.**

There is hereby created the Commission on Latino-Americans. For purposes of sections 81-8,262 to 81-8,271.01, commission means the Commission on Latino-Americans.

**Source:** Laws 1972, LB 1081, § 1; Laws 2010, LB139, § 1.

**81-8,263 Commission; members; appointment; term.**

The commission shall consist of nine members who shall be appointed by the Governor. Of the initial appointees, three shall be appointed to one-year terms, three to two-year terms, and three to three-year terms. Appointees to any vacancy which may occur shall be appointed only for the unexpired term of the member such appointee replaces. After the initial appointees have served their initial terms, all appointees shall be appointed for a three-year term. The Governor or his appointee shall be an ex officio member of the commission with the power to vote.

**Source:** Laws 1972, LB 1081, § 2.

**81-8,264 Commission; officers.**

The commission shall elect one of its members as chairman and one as secretary to serve a one-year term.

**Source:** Laws 1972, LB 1081, § 3.

**81-8,265 Commission; functions.**

The functions of the commission shall be to:

(1) Gather and disseminate information and conduct hearings, conferences, and special studies on problems and programs concerning Latino-Americans;

(2) Serve the needs of Latino-Americans, especially in the fields of education, employment, health, housing, welfare, and recreation by offering such services as it may establish for the translation of documents and for the direct assistance of clients, exclusive of legal representation, in matters relating to any federal department or agency or any department or agency of the state or a political subdivision thereof;

(3) Develop, coordinate, and assist public and private organizations and coordinate and assist the efforts of state departments and agencies to serve the needs of Latino-Americans;

(4) Propose new programs concerning Latino-Americans;

(5) Evaluate existing programs and proposed legislation concerning Latino-Americans;

(6) Stimulate public awareness of the problems of Latino-Americans by conducting a program of public education and encourage the Governor and the Legislature to develop programs to deal with these problems; and

(7) Conduct training programs for community leadership and service project staff.

**Source:** Laws 1972, LB 1081, § 4; Laws 1983, LB 83, § 1; Laws 2010, LB139, § 2.

**81-8,266 Commission; meetings; quorum.**

The full commission shall meet at least four times a year. The chairperson or any three members may call additional meetings. A majority of members shall constitute a quorum.

**Source:** Laws 1972, LB 1081, § 5; Laws 1974, LB 506, § 1; Laws 1979, LB 582, § 1; Laws 1980, LB 923, § 1.

**81-8,267 Commission; members; compensation.**

Members shall receive thirty-five dollars per day for each day spent in the performance of their official duties. Members shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1972, LB 1081, § 6; Laws 1974, LB 506, § 2; Laws 1981, LB 204, § 186.

**81-8,268 Commission; director; qualifications; employ.**

The commission shall employ a director. He shall be qualified by education and experience to assume the responsibilities of such office.

**Source:** Laws 1972, LB 1081, § 7.

**81-8,269 Director; duties.**

The director shall be the administrative officer of the commission and shall serve the commission by gathering information, disseminating findings of fact and other information, forwarding proposals and evaluations to the Governor, the Legislature, and various state agencies, carrying out public education programs, conducting hearings and conferences, and performing other duties necessary for the proper operation of the commission.

**Source:** Laws 1972, LB 1081, § 8.

**81-8,270 Director; employ personnel.**

The director may employ any subordinate personnel necessary to assist him or her in the performance of his or her duties, including clerical staff and technical advisors. The director may employ assistant directors if necessary to develop, assist, and cooperate with local commissions on Latino-Americans.

**Source:** Laws 1972, LB 1081, § 9; Laws 1980, LB 923, § 2; Laws 2010, LB139, § 3.

**81-8,271 Commission; powers.**

The commission shall have all powers necessary to carry out the functions and duties specified in sections 81-8,262 to 81-8,271, including power to establish advisory committees on special subjects, to receive or apply for and receive gifts, grants, contributions, and other funds from the federal government, private agencies, affiliated associations, and individuals, and to contract with public and private groups to conduct its business.

**Source:** Laws 1972, LB 1081, § 10; Laws 1983, LB 83, § 2.

**81-8,271.01 Commission on Latino-Americans Cash Fund; created; use; investment.**

The Commission on Latino-Americans Cash Fund is created. The Commission on Latino-Americans shall use the fund for commission functions described in sections 81-8,262 to 81-8,271. Money credited to the fund shall include any monetary gifts, grants, and donations. 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 Commission on Mexican-Americans Cash Fund on July 15, 2010, shall be transferred to the Commission on Latino-Americans Cash Fund on such date.

**Source:** Laws 2000, LB 1363, § 3; Laws 2004, LB 940, § 2; Laws 2010, LB139, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(t) NEBRASKA AMERICAN REVOLUTION BICENTENNIAL COMMISSION

**81-8,272 Repealed. Laws 1985, LB 8, § 1.**

**81-8,273 Repealed. Laws 1985, LB 8, § 1.**

**81-8,274 Repealed. Laws 1985, LB 8, § 1.**

**81-8,275 Repealed. Laws 1985, LB 8, § 1.**

(u) REAL ESTATE APPRAISERS

**81-8,276 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,277 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,278 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,279 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,280 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,281 Repealed. Laws 1978, LB 659, § 5.**

**81-8,282 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,283 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,284 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,285 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,286 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,287 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,288 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,289 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,290 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,291 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,292 Repealed. Laws 1990, LB 1153, § 67.**

**81-8,293 Repealed. Laws 1990, LB 1153, § 67.**

(v) STATE MISCELLANEOUS CLAIMS ACT

**81-8,294 Act, how cited.**

Sections 81-8,294 to 81-8,301 shall be known and may be cited as the State Miscellaneous Claims Act.

**Source:** Laws 1988, LB 864, § 44; Laws 2007, LB339, § 2.

**81-8,295 Miscellaneous claim, defined.**

As used in the State Miscellaneous Claims Act, miscellaneous claim shall mean any claim against the state for which there is no other specific provision of law for the resolution of such claim.

**Source:** Laws 1988, LB 864, § 45.

**81-8,296 State Claims Board; miscellaneous claims; powers.**

The State Claims Board shall have the power and authority to receive and investigate miscellaneous claims against the state.

**Source:** Laws 1988, LB 864, § 46.

**81-8,297 State Claims Board; general powers.**

The State Claims Board shall have the power and authority to receive, investigate, and otherwise carry out its duties with regard to (1) all claims under the State Miscellaneous Claims Act, (2) all claims under sections 25-1802 to 25-1807, (3) all claims under the State Contract Claims Act, (4) all requests on behalf of any department, board, or commission of the state for waiver or cancellation of money or charges when necessary for fiscal or accounting procedures, and (5) all claims filed under section 66-1531. All such claims or requests and supporting documents shall be filed with the Risk Manager and shall be designated by number, name of claimant as requester, and short title. Nothing in this section shall be construed to be a waiver of the sovereign immunity of the state beyond what is otherwise provided by law.

The board shall adopt and promulgate such rules and regulations as are necessary to carry out the powers granted in this section. The Attorney General shall be the legal advisor to the board for purposes of this section and may authorize the assistant attorney general in charge of the Claims Division to perform any of his or her duties under this section.

**Source:** Laws 1988, LB 864, § 47; Laws 1998, LB 1161, § 36.

**Cross References**

State Contract Claims Act, see section 81-8,302.

**81-8,298 State Claims Board; meetings; hearings; notice.**

The State Claims Board shall meet at such times and places and shall make such investigation of each claim or request referred to in section 81-8,297 as it determines necessary. If the board deems a hearing to be necessary or advisa-

ble on any claim or request so filed, it shall give to the claimant at least ten days' notice by regular mail of the time and place of hearing.

**Source:** Laws 1943, c. 129, § 3, p. 433; R.S.1943, § 81-859; Laws 1957, c. 242, § 61, p. 867; Laws 1967, c. 588, § 2, p. 2001; R.S.Supp.,1967, § 81-859; Laws 1969, c. 756, § 29, p. 2853; R.S.1943, (1987), § 81-8,237; Laws 1988, LB 864, § 48.

#### **81-8,299 State Claims Board; powers; duties.**

The State Claims Board shall, for the purposes contemplated by the State Contract Claims Act, the State Miscellaneous Claims Act, and sections 25-1802 to 25-1807 and 66-1531, have the right, power, and duty to (1) administer oaths, (2) compel the attendance of witnesses and the production of books, papers, and documents and issue subpoenas for such purposes, and (3) punish the disobedience of such a subpoena or subpoenas, the refusal of a witness to be sworn or testify, or the failure to produce books, papers, and documents, as required by such subpoena or subpoenas so issued, as contempt, in the same manner as are officers who are authorized to take depositions.

**Source:** Laws 1943, c. 129, § 4, p. 433; R.S.1943, § 81-860; Laws 1969, c. 756, § 30, p. 2853; R.S.1943, (1987), § 81-8,238; Laws 1988, LB 864, § 49; Laws 1998, LB 1161, § 37.

#### **Cross References**

State Contract Claims Act, see section 81-8,302.

#### **81-8,300 Risk Manager; State Claims Board; claims; filing; investigation; duties; review by legislature; payment.**

(1) After investigation, the Risk Manager or State Claims Board shall either approve, approve with conditions or limitations, or disapprove of each claim or request and append to the claim or request a concise statement of the facts brought out in such investigation upon which its approval or disapproval is based. If any claim is approved in an amount of more than five thousand dollars, the approval of the board is required. Such claim or request, together with the original papers supporting it and the appended statement, shall be filed with the Risk Manager in the manner prescribed by the State Claims Board. The Risk Manager shall promptly notify each claimant of the decision by the Risk Manager or State Claims Board on his or her claim by regular mail. The notification shall include (a) the decision of the Risk Manager or State Claims Board, (b) a statement that a claimant dissatisfied with the decision of the Risk Manager may have his or her claim reviewed by the board or a statement that a claimant dissatisfied with the decision of the board may have his or her claim reviewed by the Legislature upon application, (c) the procedure for making an application for review, and (d) the time limit for making such application.

(2) If the claimant is dissatisfied with the decision of the Risk Manager, he or she may file an application for review by the board. If the claimant is dissatisfied with the decision of the board, he or she may file an application for review by the Legislature. The application for review shall be filed with the Risk Manager in the manner prescribed by the board. The application for review shall be filed within sixty days after the date of the decision which is being reviewed.

(3) Each claim which has been approved or for which an application for review with the Legislature has been filed and each request referred to in section 81-8,297 shall be delivered electronically by the Risk Manager to the chairperson of the Business and Labor Committee of the Legislature at the next regular session of the Legislature convening after the date of the decision of the board. The Risk Manager may direct the payment by the state agency involved of any claim not in excess of five thousand dollars if such payment is agreed to by the head of the agency involved. The State Claims Board may direct payment by the state agency involved of any claim not in excess of fifty thousand dollars if such payment is agreed to by the head of the agency involved and the agency has sufficient funds to pay the claim. If claims approved by the Risk Manager or State Claims Board arise out of the same facts and circumstances, they shall be aggregated. If the Risk Manager or State Claims Board does not direct the payment of a claim as set forth in this section or the claim exceeds the dollar limitations set forth in this section, the claim shall be reviewed by the Legislature and an appropriation made therefor if appropriate. The Risk Manager shall report electronically all claims and judgments paid under the State Miscellaneous Claims Act to the Clerk of the Legislature and the chairperson of the Business and Labor Committee of the Legislature. The report shall include the name of the claimant, a statement of the amount claimed and paid, and a brief description of the claim including the agency and program or activity under which the claim arose. Any member of the Legislature may receive an electronic copy of the report by making a request to the Risk Manager.

**Source:** Laws 1943, c. 129, § 5, p. 433; R.S.1943, § 81-861; Laws 1959, c. 438, § 1, p. 1474; Laws 1961, c. 427, § 3, p. 1336; Laws 1967, c. 588, § 3, p. 2001; R.S.Supp.,1967, § 81-861; Laws 1969, c. 756, § 31, p. 2854; Laws 1971, LB 565, § 1; Laws 1981, LB 273, § 29; Laws 1984, LB 1028, § 4; R.S.1943, (1987), § 81-8,239; Laws 1988, LB 864, § 50; Laws 2008, LB821, § 9; Laws 2012, LB782, § 178.

#### **81-8,300.01 Statute of limitation.**

Claims described in subdivisions (4) and (5) of section 81-8,297 and claims relating to expiration of state warrants shall have no time bar to recovery. Except as provided in section 25-213, all other claims permitted under the State Miscellaneous Claims Act shall be forever barred unless the claim is filed with the Risk Manager within two years after the time the claim accrued.

**Source:** Laws 2007, LB339, § 3.

#### **81-8,301 Acceptance of award; effect.**

Any award made under the State Contract Claims Act, the State Miscellaneous Claims Act, or section 25-1806 or 66-1531 and accepted by the claimant shall be final and conclusive on all officers of the State of Nebraska except when procured by means of fraud. The acceptance by the claimant of such award shall be final and conclusive on the claimant and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim by reason of the same subject matter.

**Source:** Laws 1988, LB 864, § 51; Laws 1998, LB 1161, § 38.

## Cross References

State Contract Claims Act, see section 81-8,302.

## (w) STATE CONTRACT CLAIMS ACT

**81-8,302 Act, how cited.**

Sections 81-8,302 to 81-8,306 shall be known and may be cited as the State Contract Claims Act.

**Source:** Laws 1988, LB 864, § 52.

**81-8,303 Terms, defined.**

For purposes of the State Contract Claims Act, unless the context otherwise requires:

(1) Contract claim shall mean a claim against the state involving a dispute regarding a contract between the State of Nebraska or a state agency and the claimant other than employment contracts covered by the State Personnel System or entered into pursuant to the State Employees Collective Bargaining Act;

(2) Contracting agency shall mean the state agency which is a party to a contract which gives rise to the contract claim; and

(3) State agency shall mean all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency shall not be construed to include any contractor with the State of Nebraska.

**Source:** Laws 1988, LB 864, § 53; Laws 1991, LB 81, § 8; Laws 1999, LB 87, § 94.

## Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

State Employees Collective Bargaining Act, see section 81-1369.

**81-8,304 Contract claims; filing procedure.**

All contract claims shall be filed with the Risk Manager in the manner prescribed by the State Claims Board. Contract claims shall be filed on forms provided by the Risk Manager, and each claimant shall include at least the following information: (1) A copy of the contract allegedly breached; (2) the manner in which the contract was allegedly breached; and (3) the damages incurred as a result of the alleged breach. The Risk Manager shall immediately advise the Attorney General and the contracting agency in writing of the filing of any such claim. The contracting agency shall cause an investigation to be made of all such claims. The Attorney General shall serve as a legal advisor to the State Claims Board on all such claims.

**Source:** Laws 1988, LB 864, § 54.

**81-8,305 State Claims Board; submission of claim; procedure; action in district court; when.**

(1) If agreed to by the claimant and the contracting agency, the State Claims Board shall have the authority to consider, ascertain, adjust, compromise, settle, determine, or allow any contract claim. Upon receipt of a contract claim, the Risk Manager shall immediately notify the claimant and the contracting agency of the option of having the dispute submitted to the State Claims Board.

(2) If the claimant and the contracting agency agree to submit the dispute to the State Claims Board as provided in subsection (1) of this section, the board shall resolve such dispute in the manner provided under the State Miscellaneous Claims Act. For claims submitted to the board under this subsection, the contracting agency shall provide the board with all documents and information relating to the claim which the contracting agency obtained during its investigation.

(3) If either the claimant or the contracting agency notifies the Risk Manager in writing within ninety days after mailing of the notice required in subsection (1) of this section that the claimant or the contracting agency objects to the submission of the dispute to the State Claims Board, the board shall have no further jurisdiction over the claim and the claimant may initiate an action in the district court of Lancaster County. The action in the district court of Lancaster County must be filed with the district court within two years after the date the Risk Manager receives the written notification of objection or the claim shall be forever barred.

**Source:** Laws 1988, LB 864, § 55; Laws 2008, LB821, § 10.

#### Cross References

State Miscellaneous Claims Act, see section 81-8,294.

This section does not violate article VIII, section 9, of the Nebraska Constitution. *Pavers, Inc. v. Board of Regents*, 276 Neb. 559, 755 N.W.2d 400 (2008).

### **81-8,306 Claims; when barred; exclusive remedy.**

Except as provided in section 25-213, every contract claim permitted under the State Contract Claims Act shall be forever barred unless the claim is filed with the Risk Manager within two years of the time at which the claim accrued. The State Contract Claims Act shall provide the exclusive remedy for resolving contract claims.

**Source:** Laws 1988, LB 864, § 56.

For purposes of this section, the claim accrues when an injury occurs and the injured party has the right to seek redress by instituting and maintaining a lawsuit. *Baldwin Carpet v. Builders, Inc.*, 3 Neb. App. 40, 523 N.W.2d 33 (1994).

### (x) NEBRASKA LEWIS AND CLARK BICENTENNIAL COMMISSION

**81-8,307 Repealed. Laws 2009, LB 154, § 27.**

**81-8,308 Repealed. Laws 2009, LB 154, § 27.**

### (y) NEBRASKA SESQUICENTENNIAL COMMISSION

**81-8,309 Nebraska Sesquicentennial Commission; members; vacancy; termination.**

The Nebraska Sesquicentennial Commission is hereby established. The commission shall consist of seventeen members to be appointed by the Governor

within sixty days after July 1, 2014. The commission shall include members from all regions of the state, representing all major interests and a diverse array of industries. No more than eight of the members shall be affiliated with the same political party. The members shall select a chairperson and a vice-chairperson, and all members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The Governor shall fill any vacancy occurring on the commission by appointment. For administrative and budgetary purposes only, the commission shall be housed within the Nebraska State Historical Society. The existence of the commission and terms of the members shall terminate on June 30, 2018.

**Source:** Laws 2014, LB744, § 1.  
Operative date July 1, 2014.

### **81-8,310 Nebraska Sesquicentennial Commission; duties; powers.**

The Nebraska Sesquicentennial Commission shall develop programs and plans for official observance of the one hundred fiftieth anniversary of Nebraska statehood in 2017. The commission shall work closely with various state agencies, boards, commissions, and political subdivisions, including the State Department of Education, the Department of Roads, the Nebraska State Historical Society, the Nebraska State Fair Board, the Game and Parks Commission, and the Nebraska Tourism Commission, to execute commemorative events and to implement educational activities. The commission may also seek the guidance and support of any other groups or organizations the commission deems necessary or helpful in fulfilling its purpose.

The commission may employ personnel, contract for services, and receive and expend gifts, grants, and donations to aid in the performance of its duties. The commission is empowered to expend any appropriations authorized by the Legislature to carry out the purposes of sections 81-8,309 and 81-8,310.

**Source:** Laws 2014, LB744, § 2.  
Operative date July 1, 2014.

## **ARTICLE 9**

### **STATE COOPERATION WITH FEDERAL GOVERNMENT**

#### Section

- 81-901. Authority of state or political subdivision to withhold tax; payment to proper officer; record.
- 81-902. Tax Commissioner; forms and records.
- 81-903. Repealed. Laws 1947, c. 317, § 2.
- 81-904. Expired. Laws 1945, c. 231, § 1.
- 81-905. Expired. Laws 1945, c. 231, § 2.
- 81-906. Expired. Laws 1945, c. 232, § 1.
- 81-906.01. Expired. Laws 1951, c. 1, § 1.
- 81-907. Surplus property; purchase or receive from government.
- 81-908. Surplus property; advertisement for and submission of bids not necessary.
- 81-909. Department of Correctional Services; surplus property; act for recipient; negotiate with appropriate agencies and institutions.
- 81-910. State Department of Education; assist public schools; secure funds, services, and commodities made available by federal government.
- 81-911. Public schools; contracts in securing funds, services, and commodities; filed in office of State Department of Education; channeled and administered.
- 81-912. Federal Surplus Property Fund; created; purpose; investment.
- 81-913. Surplus and excess property program; legislative intent.

## Section

- 81-914. Department of Correctional Services; implementation of surplus and excess property plan.
- 81-915. Repealed. Laws 1981, LB 536, § 8.
- 81-916. Property and assets relating to surplus and excess property programs; transferred to Department of Correctional Services; when.
- 81-917. Surplus and excess property program; employees of Department of Roads; transferred to Department of Correctional Services; conditions; benefits.
- 81-918. Department of Correctional Services; adopt rules and regulations.

**81-901 Authority of state or political subdivision to withhold tax; payment to proper officer; record.**

The State of Nebraska, any political subdivision thereof, any municipal corporation or any public body or agency created by the laws of this state is authorized (1) to withhold from any wages or salaries paid by it to any person, such portion thereof as may be required to be withheld by any law of the United States relating to internal revenue; (2) to pay the sum so withheld to the appropriate internal revenue collector at the time and in the manner provided by any such internal revenue law; and (3) to keep and make such records, reports and returns as are provided by such internal revenue law, or the regulations promulgated thereunder.

**Source:** Laws 1943, c. 233, § 1, p. 784; R.S.1943, § 81-901; Laws 1945, c. 230, § 1, p. 678; Laws 1947, c. 317, § 1, p. 959.

**81-902 Tax Commissioner; forms and records.**

The Tax Commissioner, upon behalf of the state, any municipal corporation or any public body or agency created by the laws of this state and the governing body thereof and, upon behalf of any political subdivision of the state, is authorized to prescribe such forms and records as may be necessary to carry out the provisions of this section and section 81-901.

**Source:** Laws 1943, c. 233, § 2, p. 784; R.S.1943, § 81-902.

**81-903 Repealed. Laws 1947, c. 317, § 2.**

**81-904 Expired. Laws 1945, c. 231, § 1.**

**81-905 Expired. Laws 1945, c. 231, § 2.**

**81-906 Expired. Laws 1945, c. 232, § 1.**

**81-906.01 Expired. Laws 1951, c. 1, § 1.**

**81-907 Surplus property; purchase or receive from government.**

The State of Nebraska, its political subdivisions and instrumentalities, and tax-supported institutions are authorized to purchase or receive surplus property from the government of the United States or any government agency thereof.

**Source:** Laws 1945, c. 234, § 1, p. 693; Laws 1977, LB 548, § 5.

**81-908 Surplus property; advertisement for and submission of bids not necessary.**

In making purchases under sections 81-907 to 81-909, it shall not be necessary to first advertise for and require submission of bids.

**Source:** Laws 1945, c. 234, § 2, p. 693.

**81-909 Department of Correctional Services; surplus property; act for recipient; negotiate with appropriate agencies and institutions.**

The Department of Correctional Services shall, upon behalf of the state, and may, upon behalf of any political subdivision, instrumentality, and tax-supported institution of the state, be designated to act for the recipient and negotiate with the appropriate agencies and institutions of the United States for the purchase or receipt of surplus property under such regulations as may be prescribed by federal law.

**Source:** Laws 1945, c. 234, § 3, p. 693; Laws 1977, LB 548, § 6; Laws 1981, LB 536, § 1; Laws 1982, LB 767, § 1.

**81-910 State Department of Education; assist public schools; secure funds, services, and commodities made available by federal government.**

The State Department of Education shall cooperate with and assist the public schools and public educational institutions in securing funds, services, and commodities which may be made available to them by the federal government or its agencies.

**Source:** Laws 1945, c. 239, § 1, p. 718; Laws 1977, LB 548, § 7.

**81-911 Public schools; contracts in securing funds, services, and commodities; filed in office of State Department of Education; channeled and administered.**

A copy of all contracts, agreements or arrangements made by any public school or public educational institution, under the supervision of the State Department of Education, in securing funds, services, and commodities from the federal government or its agencies, as provided by section 81-910, shall be filed in the office of the department. Any federal funds made available for public schools in this state shall be channeled through the department and be administered in conformity with the laws of this state.

**Source:** Laws 1945, c. 239, § 2, p. 718; Laws 1947, c. 318, § 1(1), p. 960; Laws 1977, LB 548, § 8.

**81-912 Federal Surplus Property Fund; created; purpose; investment.**

There is hereby established in the Department of Correctional Services a revolving fund to be known as the Federal Surplus Property Fund. The Director of Administrative Services, upon receipt of proper vouchers approved by the Department of Correctional Services, shall issue warrants out of the Federal Surplus Property Fund for the purpose of administering the program and for purchasing, packing, handling, and transportation of equipment from the federal government as provided by section 81-914 but never in excess of the amount specifically appropriated. All receipts for purchasing, packing, handling, and transportation of such equipment shall be remitted to the State Treasurer for credit to the Federal Surplus Property Fund. Any money in the Federal Surplus Property 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 1947, c. 318, § 1(1), p. 960; Laws 1969, c. 584, § 107, p. 2413; Laws 1977, LB 548, § 9; Laws 1981, LB 536, § 2; Laws 1982, LB 767, § 2; Laws 1995, LB 7, § 115.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-913 Surplus and excess property program; legislative intent.**

It is the intent of the Legislature that a single state agency shall, in cooperation with other state agencies and political subdivisions, carry out the provisions of Public Law 94-519.

**Source:** Laws 1977, LB 548, § 1.

**81-914 Department of Correctional Services; implementation of surplus and excess property plan.**

The Department of Correctional Services shall be responsible for the implementation of a state plan to comply with Public Law 94-519 dealing with surplus and excess property.

**Source:** Laws 1977, LB 548, § 2; Laws 1981, LB 536, § 3; Laws 1982, LB 767, § 3.

**81-915 Repealed. Laws 1981, LB 536, § 8.**

**81-916 Property and assets relating to surplus and excess property programs; transferred to Department of Correctional Services; when.**

Effective July 1, 1982, all property, assets, and liabilities relating to those federal surplus and excess property programs which are consolidated by Public Law 94-519 and operated by the Department of Roads shall be transferred to the Department of Correctional Services.

**Source:** Laws 1977, LB 548, § 4; Laws 1981, LB 536, § 4; Laws 1982, LB 767, § 4.

**81-917 Surplus and excess property program; employees of Department of Roads; transferred to Department of Correctional Services; conditions; benefits.**

All employees employed in those federal surplus and excess property programs which are consolidated by Public Law 94-519 and have been transferred to the Department of Roads may be transferred to the Department of Correctional Services. All employees so transferred shall be: (1) Employed under and compensated through the State Personnel System; and (2) considered as new employees solely for purposes of performance evaluation and subject to all applicable policies and procedures for such transfer. All employees so transferred shall keep all accrued benefits such as sick leave, vacation leave, and retirement benefits after such transfer has been completed.

**Source:** Laws 1977, LB 548, § 11; Laws 1981, LB 536, § 5; Laws 1982, LB 767, § 5.

**81-918 Department of Correctional Services; adopt rules and regulations.**

The Department of Correctional Services shall adopt and promulgate rules and regulations necessary to carry out sections 81-907 and 81-909 to 81-918.

**Source:** Laws 1977, LB 548, § 12; Laws 1981, LB 536, § 6; Laws 1982, LB 767, § 6.

**ARTICLE 10****STATE-OWNED MOTOR VEHICLES**

## Section

- 81-1001. Repealed. Laws 1969, c. 770, § 11.
- 81-1002. Repealed. Laws 1969, c. 770, § 11.
- 81-1003. Repealed. Laws 1969, c. 770, § 11.
- 81-1004. Repealed. Laws 1969, c. 770, § 11.
- 81-1005. Repealed. Laws 1969, c. 770, § 11.
- 81-1006. Repealed. Laws 1969, c. 770, § 11.
- 81-1007. Repealed. Laws 1969, c. 770, § 11.
- 81-1008. Transportation services bureau; created; responsibility.
- 81-1008.01. Transportation services bureau; purposes.
- 81-1009. Chief of transportation services bureau; appointment; qualifications.
- 81-1010. Chief of transportation services bureau; duties; responsibilities;  
Transportation Services Bureau Revolving Fund; created; use.
- 81-1011. Terms, defined.
- 81-1012. Repealed. Laws 1987, LB 22, § 4.
- 81-1013. Agencies owning vehicles paid for other than from General Fund; transfer  
title to transportation services bureau; reimbursement by credit against  
future charges.
- 81-1014. Privately owned vehicle; mileage allowance; conditions.
- 81-1015. State-owned vehicles; title in bureau; purchases; restrictions.
- 81-1016. Rules and regulations.
- 81-1017. Sections; exceptions.
- 81-1018. State-owned vehicles that are passenger cars; intermediate or compact  
class or smaller; legislative intent.
- 81-1019. Bureau fleet vehicle; use state fuel; surcharge.
- 81-1020. Permanent assignment of bureau fleet vehicle; approval required.
- 81-1021. Identification requirements; exceptions.
- 81-1022. Nebraska State Patrol; additional equipment and marking required.
- 81-1023. Identification or marking; violation; penalty.
- 81-1024. Personal use prohibited; penalty.
- 81-1025. Reports; contents; open to public inspection; exception.

**81-1001 Repealed. Laws 1969, c. 770, § 11.**

**81-1002 Repealed. Laws 1969, c. 770, § 11.**

**81-1003 Repealed. Laws 1969, c. 770, § 11.**

**81-1004 Repealed. Laws 1969, c. 770, § 11.**

**81-1005 Repealed. Laws 1969, c. 770, § 11.**

**81-1006 Repealed. Laws 1969, c. 770, § 11.**

**81-1007 Repealed. Laws 1969, c. 770, § 11.**

**81-1008 Transportation services bureau; created; responsibility.**

There is hereby created within the Department of Administrative Services the transportation services bureau which shall provide service and guidance to all

state agencies in the utilization, operation, and servicing of bureau fleet vehicles and the utilization of privately owned vehicles used for state purposes. The transportation services bureau shall be responsible for monitoring all transportation requirements of the state and maintaining complete records thereon.

**Source:** Laws 1969, c. 770, § 1, p. 2918; Laws 2012, LB779, § 1.

**81-1008.01 Transportation services bureau; purposes.**

The purposes of the transportation services bureau are to centralize title to and insure efficient utilization and proper maintenance of all state-owned vehicles, to rent passenger vehicles from a third-party fleet primarily for transporting state employees from one job location to another, and to provide vehicle transportation services to all state agencies, boards, and commissions.

**Source:** Laws 1981, LB 381, § 39; Laws 2012, LB779, § 2.

**81-1009 Chief of transportation services bureau; appointment; qualifications.**

The Director of Administrative Services shall appoint as chief of the transportation services bureau any person who has had not less than three years' experience in a position or positions which include responsibility for management, purchase, lease or control of a system of transportation for a private or governmental enterprise. No person shall hold the position of chief of the transportation services bureau who is directly or indirectly interested in any company engaged in furnishing transportation services or equipment, except that an investment in stock of such a company in an amount determined by the director to be insignificant shall not be considered disqualifying.

**Source:** Laws 1969, c. 770, § 2, p. 2919.

**81-1010 Chief of transportation services bureau; duties; responsibilities; Transportation Services Bureau Revolving Fund; created; use.**

The chief of the transportation services bureau shall have the following duties and responsibilities:

(1) To establish standards which a state agency must meet for the full-time assignment of state-owned vehicles;

(2) To create a motor pool or motor pools of bureau fleet vehicles for the use of agencies whose travel requirements do not meet the standards established under subdivision (1) of this section;

(3) To repair, maintain, and lease to state agencies state-owned vehicles and approve the acquisition, sale, or trade of each and every state-owned vehicle made by the materiel division of the Department of Administrative Services. The bureau may provide for repair and maintenance pursuant to subdivision (8) of this section;

(4) To consult with the various state agencies using bureau fleet vehicles and write specifications for state-owned vehicles to be purchased by the materiel division;

(5) To provide for the purchase only of state-owned vehicles used primarily for the transportation of state employees from funds received from the sale of surplus state-owned vehicles;

(6) To present to the accounting division of the Department of Administrative Services cost and maintenance records of state-owned vehicles and cost records of rented bureau fleet vehicles so that the various state agencies which use bureau fleet vehicles may be billed for such use. Income arising from these billings shall be deposited to the Transportation Services Bureau Revolving Fund, which fund is hereby created. All expenses of acquisition, operation, and maintenance of state-owned vehicles used primarily for transportation of state employees and of rental of bureau fleet vehicles shall be paid from such fund. Money in the Transportation Services Bureau Revolving Fund may be transferred to the General Fund at the direction of the Legislature. The Department of Administrative Services shall develop a system of time and mileage charges for the purpose of billing the various state agencies for their vehicle usage. The daily, weekly, or monthly charge shall cover all fixed expenses of such vehicles, and the mileage charge shall cover the variable costs of operation;

(7) To monitor the utilization of permanently assigned bureau fleet vehicles and enforce minimum utilization standards by withdrawing permanently assigned bureau fleet vehicles from agencies which are not meeting the standards established under subdivision (1) of this section;

(8) To enter into service agreements for the repair and maintenance of bureau fleet vehicles when it is determined that such action would be to the economic advantage of the state;

(9) To insure compliance with section 81-1021 for all state-owned vehicles; and

(10) To enter into rental agreements with any third-party fleet owner in the name of the State of Nebraska for passenger vehicles for use primarily for transportation of state employees for transportation in their official duties from one job location to another when it is determined that such action would be to the economic advantage of the state.

**Source:** Laws 1969, c. 770, § 3, p. 2919; Laws 1971, LB 28, § 6; Laws 1972, LB 1452, § 2; Laws 1976, LB 977, § 1; Laws 1981, LB 381, § 11; Laws 1983, LB 469, § 7; Laws 1993, LB 370, § 483; Laws 2012, LB779, § 3.

**81-1011 Terms, defined.**

For purposes of sections 81-1008 to 81-1025:

(1) Bureau means the transportation services bureau of the Department of Administrative Services;

(2) Bureau fleet vehicle includes any state-owned vehicle and any passenger vehicle rented from a third-party fleet owner for use by a state employee for transportation in his or her official duties from one job location to another; and

(3)(a) State-owned vehicle means all passenger vehicles acquired primarily for the purpose of transporting state employees in their official duties from one job location to another.

(b) State-owned vehicle does not include special-use vehicles, such as buses, laundry trucks, mail trucks, airport security vehicles, or military trucks and cars; vehicles which are considered a duty station, such as vehicles used by the Nebraska State Patrol, the Nebraska Oil and Gas Conservation Commission, or conservation officers of the Game and Parks Commission; or those vehicles which, by nature of their usage, require the installation or carrying of special

equipment which precludes the use of such vehicles for multiple agency transportation usage.

**Source:** Laws 1969, c. 770, § 4, p. 2920; Laws 1975, LB 474, § 1; Laws 1980, LB 709, § 5; Laws 2012, LB779, § 4.

**81-1012 Repealed. Laws 1987, LB 22, § 4.**

**81-1013 Agencies owning vehicles paid for other than from General Fund; transfer title to transportation services bureau; reimbursement by credit against future charges.**

On May 23, 1981, all state agencies owning vehicles used primarily for transportation of persons which were paid for wholly or partially by funds other than the General Fund shall transfer title to such vehicles to the transportation services bureau. The transportation services bureau shall compute the value of such vehicles at the time of transfer and give credit to the appropriate agency and program for the portion of such value based on the percentage of original purchase cost charged to appropriations other than from the General Fund. To get such credit each agency shall make available the appropriate accounting data. Such credit shall be applied against future daily, weekly, or monthly charges but not against future mileage charges.

**Source:** Laws 1969, c. 770, § 6, p. 2920; Laws 1981, LB 381, § 13.

**81-1014 Privately owned vehicle; mileage allowance; conditions.**

No agency shall allow mileage reimbursement charges on travel expense vouchers of state officers or employees unless there is filed with the expense voucher a statement signed by the director of the agency or his or her authorized representative declaring that the use of a privately owned vehicle was authorized according to the provisions of section 81-1176. State officers or employees may be authorized to use their personal automobiles on state business at the convenience of the agency, or at the convenience of the state officer or employee, as previously agreed upon by the officer or employee and the agency involved, and shall receive a mileage reimbursement for each mile actually and necessarily traveled in each calendar month as provided in section 81-1176.

**Source:** Laws 1969, c. 770, § 7, p. 2920; Laws 1975, LB 8, § 1; Laws 1981, LB 381, § 14.

**81-1015 State-owned vehicles; title in bureau; purchases; restrictions.**

Subject to section 81-1013, the bureau shall own and hold title, in the name of the State of Nebraska, to all state-owned vehicles. All purchases of state-owned vehicles and automotive equipment shall be made or approved by the bureau. The Director of Administrative Services shall not approve any voucher for the purchase of any passenger car unless submitted by the bureau.

**Source:** Laws 1969, c. 770, § 8, p. 2921; Laws 1975, LB 474, § 2; Laws 1981, LB 381, § 15; Laws 2012, LB779, § 5.

**81-1016 Rules and regulations.**

The bureau shall adopt and promulgate rules and regulations necessary to administer sections 81-1008 to 81-1025.

**Source:** Laws 1969, c. 770, § 9, p. 2921; Laws 2012, LB779, § 6.

**81-1017 Sections; exceptions.**

Sections 81-1008 to 81-1025 do not apply to any court or the motor vehicles thereof, except that such vehicles shall be titled as provided in section 81-1013.

**Source:** Laws 1969, c. 770, § 10, p. 2921; Laws 1975, LB 474, § 3; Laws 2010, LB722, § 3; Laws 2012, LB779, § 7.

**81-1018 State-owned vehicles that are passenger cars; intermediate or compact class or smaller; legislative intent.**

(1) The Legislature hereby declares that the purpose and intent of this section are to take positive steps to reduce the consumption of gasoline in this state and to make the most efficient and economical use of the nation's resources and the state's funds.

(2) After August 24, 1975, all state-owned vehicles that are passenger cars purchased, leased, rented, or approved for purchase, lease, or rent by the bureau shall be of the intermediate, compact, or subcompact class. Not less than fifty percent of such state-owned vehicles shall be of the compact or subcompact class unless the costs to operate and maintain such vehicles are not to the advantage of the state or such requirement fails to meet the intent of sections 81-1008 to 81-1025. For purposes of this section, classes shall be as defined by motor vehicle manufacturers.

**Source:** Laws 1975, LB 474, § 4; Laws 1981, LB 381, § 16; Laws 1984, LB 933, § 14; Laws 2012, LB779, § 8; Laws 2014, LB974, § 7. Effective date April 3, 2014.

**81-1019 Bureau fleet vehicle; use state fuel; surcharge.**

(1) Any person using a bureau fleet vehicle shall, whenever possible, obtain fuel from state-owned facilities.

(2) The bureau may place a surcharge on any agency whose employees have not complied with subsection (1) of this section.

**Source:** Laws 1981, LB 381, § 17; Laws 2012, LB779, § 9.

**81-1020 Permanent assignment of bureau fleet vehicle; approval required.**

Any agency which has a permanently assigned bureau fleet vehicle shall, prior to assigning such vehicle to an employee on a twenty-four-hour basis, obtain written approval from the chief of the transportation services bureau.

**Source:** Laws 1981, LB 381, § 18; Laws 2012, LB779, § 10.

**81-1021 Identification requirements; exceptions.**

(1) All motor vehicles acquired by the State of Nebraska except any vehicle rented as a bureau fleet vehicle shall be indelibly and conspicuously lettered, in plain letters of a contrasting color or reflective material:

(a) On each side thereof with the words State of Nebraska and following such words the name of whatever board, department, bureau, division, institution,

including the University of Nebraska or state college, office, or other state expending agency of the state to which the motor vehicle belongs; and

(b) On the back thereof with the words State of Nebraska.

(2) This section shall not apply to motor vehicles used or controlled by:

(a) The Nebraska State Patrol, the Public Service Commission, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, inspectors employed by the Nebraska Liquor Control Commission, and persons employed by the Tax Commissioner for state revenue enforcement purposes, the exemption for state law enforcement purposes and state revenue enforcement purposes being confined strictly to the seven agencies specifically named;

(b) The Department of Health and Human Services or the Department of Correctional Services for the purpose of apprehending and returning escaped offenders or parole violators to facilities in the Department of Correctional Services and transporting offenders and personnel of the Department of Correctional Services and patients and personnel of the Department of Health and Human Services who are engaged in off-campus program activities;

(c) The Military Department;

(d) Vocational rehabilitation counselors and the Department of Health and Human Services for the purposes of communicable disease control, for the prevention and control of those communicable diseases which endanger the public health, or used by the Department of Health and Human Services in the enforcement of drug control laws or for other investigation purposes;

(e) The Department of Agriculture for special investigative purposes;

(f) The Nebraska Motor Vehicle Industry Licensing Board for investigative purposes; and

(g) The Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes.

**Source:** Laws 1939, c. 94, § 2, p. 409; C.S.Supp.,1941, § 60-1201; R.S. 1943, § 60-1001; Laws 1951, c. 202, § 1, p. 758; Laws 1951, c. 203, § 1, p. 759; Laws 1957, c. 278, § 1, p. 1008; Laws 1959, c. 300, § 1, p. 1127; Laws 1965, c. 390, § 1, p. 1247; Laws 1969, c. 512, § 1, p. 2099; Laws 1969, c. 513, § 1, p. 2100; Laws 1972, LB 1295, § 1; Laws 1973, LB 201, § 1; Laws 1973, LB 563, § 5; Laws 1975, LB 253, § 1; Laws 1984, LB 933, § 1; R.S.1943, (1988), § 60-1001; Laws 1993, LB 370, § 484; Laws 1993, LB 575, § 47; Laws 1996, LB 1044, § 862; Laws 1996, LB 1155, § 79; Laws 1999, LB 326, § 11; Laws 2007, LB296, § 753; Laws 2012, LB779, § 11.

**81-1022 Nebraska State Patrol; additional equipment and marking required.**

In addition to the requirements of section 81-1021, all motor vehicles used by the Nebraska State Patrol for patrol purposes shall be (1) equipped with a flashing red light on the top thereof with controls therefor readily accessible to the driver and (2) on the back thereof indelibly and conspicuously lettered with

the words State Patrol in plain letters of reflective material not less than two inches in height and with not less than one-fourth inch stroke.

**Source:** Laws 1965, c. 390, § 2, p. 1248; Laws 1967, c. 391, § 6, p. 1217; R.S.1943, (1988), § 60-1001.01; Laws 1993, LB 370, § 485.

#### **81-1023 Identification or marking; violation; penalty.**

Any employee or officer of the State of Nebraska who operates or has under his or her control any state-owned vehicle, any other motor vehicle acquired by the State of Nebraska, or any unit of road machinery which is not numbered, lettered, or marked as required by section 81-1021, or who violates any of the other provisions of sections 60-3,105, 60-3,106, 81-1021, and 81-1022 shall be deemed guilty of official misconduct in office for a palpable omission of duty and upon conviction thereof shall be guilty of a Class II misdemeanor. The court shall have the power to add to the judgment that any officer so convicted shall be removed from office or employment.

**Source:** Laws 1939, c. 94, § 4, p. 411; C.S.Supp.,1941, § 60-1203; R.S. 1943, § 60-1004; Laws 1978, LB 748, § 34; Laws 1987, LB 22, § 3; R.S.1943, (1988), § 60-1004; Laws 1993, LB 370, § 486; Laws 2005, LB 274, § 282; Laws 2012, LB779, § 12.

#### **81-1024 Personal use prohibited; penalty.**

No officer or employee of the State of Nebraska shall use any motor vehicle owned by the State of Nebraska for any personal use whatsoever. Any officer or employee who violates any of the provisions of this section shall be deemed guilty of a Class V misdemeanor, and in addition thereto the officer or employee shall be deemed guilty of official misconduct in office for palpable omission of duty, and upon conviction thereof the court shall have the power to add to the judgment that any officer or employee so convicted shall be removed from office or employment.

**Source:** Laws 1941, c. 180, § 16, p. 710; C.S.Supp.,1941, § 60-1204; R.S.1943, § 60-1005; Laws 1977, LB 39, § 88; Laws 1978, LB 748, § 35; R.S.1943, (1988), § 60-1005; Laws 1993, LB 370, § 487.

#### **81-1025 Reports; contents; open to public inspection; exception.**

(1) Each operator of a bureau fleet vehicle shall report the points between which the bureau fleet vehicle traveled each time used, the odometer readings at such points, the time of arrival and departure, the necessity and purpose for such travel, the license number of such vehicle, and the department to which such vehicle is assigned.

(2)(a) Each operator of a special-use vehicle as prescribed in section 81-1011 or a motor vehicle in which a state agency other than the bureau holds the title shall follow the policy and use the travel report form which shall be established by the director or designated head of the state agency owning such vehicle. The form shall include, but not be limited to, the name of the operator, the license number of the vehicle, the total daily mileage or total hours of daily operation, and any other information the director or designated head deems relevant.

(b) State agencies leasing or renting bureau fleet vehicles from the bureau pursuant to sections 81-1008.01 and 81-1010 shall be required to report bureau

fleet vehicle usage pursuant to subsection (1) of this section on travel forms prescribed by the chief of the transportation services bureau.

(3) Such travel reports shall be transmitted at the end of each month by every operator to the director or designated head of the operator's state agency, and such reports, after review by the director or designated head of the agency, shall be retained by the agency except the travel reports on bureau fleet vehicles leased or rented from the bureau. The travel reports on bureau fleet vehicles leased or rented from the bureau shall be transmitted to the chief of the transportation services bureau on or before the seventh day of the month following such use of a bureau fleet vehicle.

(4) Such travel reports shall thereafter be open to public inspection for a period of two years, after which they may be destroyed, except that when public inspection of a particular record would be detrimental to the investigation of a criminal case, such particular record shall be withheld from public inspection upon written certificate to that effect by the head of the law enforcement agency concerned.

(5) For purposes of this section, state agency shall include an agency, department, board, bureau, or commission of the state except the transportation services bureau.

**Source:** Laws 1959, c. 301, § 1, p. 1129; Laws 1961, c. 181, § 10, p. 542; R.S.1943, (1988), § 60-1006; Laws 1993, LB 370, § 488; Laws 1993, LB 575, § 48; Laws 2012, LB779, § 13.

## ARTICLE 11

### DEPARTMENT OF ADMINISTRATIVE SERVICES

#### (a) GENERAL PROVISIONS

##### Section

- 81-1101. Department of Administrative Services; declaration of legislative purpose.
- 81-1102. Terms, defined.
- 81-1103. Department of Administrative Services; creation; director; appointment; service.
- 81-1104. Director of Administrative Services; qualifications.
- 81-1105. Director of Administrative Services; compensation.
- 81-1106. Director of Administrative Services; offices.
- 81-1107. Director of Administrative Services; duties, powers, and responsibilities.
- 81-1107.01. Director of Administrative Services; accountant; record keeper.
- 81-1107.02. Director of Administrative Services; settlement of accounts; powers.
- 81-1107.03. Director of Administrative Services; records; copies; fee; maintenance.
- 81-1107.04. Director of Administrative Services; books and records; open to inspection.
- 81-1107.05. Director of Administrative Services; interfund borrowing; powers and duties.
- 81-1108. Department of Administrative Services; divisions; Director of Administrative Services; appointment of division heads; delegation of authority.
- 81-1108.01. Administrator of divisions; compensation.
- 81-1108.02. Department of Administrative Services Revolving Fund; created; use; investment.
- 81-1108.03. Master Lease Program Trust Fund; created; use; investment.
- 81-1108.04. Transferred to section 81-1108.12.
- 81-1108.05. Repealed. Laws 2001, LB 96, § 8.
- 81-1108.06. Transferred to section 81-1108.41.
- 81-1108.07. Transferred to section 81-1108.42.
- 81-1108.08. Transferred to section 81-1108.43.
- 81-1108.09. Sections; exceptions.

## DEPARTMENT OF ADMINISTRATIVE SERVICES

### Section

- 81-1108.10. Terms, defined.
- 81-1108.11. Department of Administrative Services; state building division; State Building Administrator; compensation.
- 81-1108.12. State Building Administrator; qualifications.
- 81-1108.13. State Building Administrator; oath.
- 81-1108.14. State Building Administrator; bond or insurance.
- 81-1108.15. State building division; functions and responsibilities; facilities planning, construction, and administration.
- 81-1108.16. State Building Administrator; review program statements and contracts; file reports; contents; lease; approval of Department of Administrative Services.
- 81-1108.17. Department of Administrative Services; custodian of state property; director; administrator; powers and duties; Capitol Buildings Parking Revolving Fund; created; purpose; use.
- 81-1108.18. State Building Administrator; parking of motor vehicles; rules and regulations; violations; personal responsibility for violation.
- 81-1108.19. Repealed. Laws 1981, LB 545, § 52.
- 81-1108.20. Administrator; employees; supplies.
- 81-1108.21. Repealed. Laws 2004, LB 439, § 33.
- 81-1108.22. State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed; administrator; duties; State Building Revolving Fund; created; use; investment; applicability of section, when.
- 81-1108.23. Administrator; personnel.
- 81-1108.24. State Emergency Capital Construction Contingency Fund; created; investment.
- 81-1108.25. State Emergency Capital Construction Contingency Fund; purpose.
- 81-1108.26. University of Nebraska; heat and power plant; control; use; costs.
- 81-1108.27. State Capitol; state buildings; electric current; agreement.
- 81-1108.28. Board of Regents; Department of Health and Human Services and Department of Correctional Services; electric current; agreements.
- 81-1108.29. Board of Regents; Department of Administrative Services; heat, light, power; furnish; agreement.
- 81-1108.30. Nebraska State Fairgrounds; electric current; University of Nebraska may supply; when.
- 81-1108.31. State Capitol improvement district; powers.
- 81-1108.32. Nebraska Capitol Commission; creation; members; appointment; expenses.
- 81-1108.33. State building division; Task Force for Building Renewal; reviews required; report; approval; when required.
- 81-1108.34. Repealed. Laws 1987, LB 32, § 3.
- 81-1108.35. Repealed. Laws 1987, LB 32, § 3.
- 81-1108.36. State-owned or leased sites or structures; naming.
- 81-1108.37. Administrator; state office building; powers.
- 81-1108.38. Nebraska Capitol Commission; duties; powers.
- 81-1108.39. Repealed. Laws 1986, LB 746, § 1.
- 81-1108.40. Repealed. Laws 2009, LB 207, § 5.
- 81-1108.41. State comprehensive capital facilities plan; State Comprehensive Capital Facilities Planning Committee; program statement; appropriation for drawings and construction; contracts; approval; report; contents.
- 81-1108.42. Contract for construction, reconstruction, remodeling, or repair of capital facility; final payment; conditions.
- 81-1108.43. Capital construction project; prohibited acts; exceptions; warrant; when issued.
- 81-1108.44. Repealed. Laws 1987, LB 32, § 3.
- 81-1108.45. Repealed. Laws 1987, LB 32, § 3.
- 81-1108.46. Repealed. Laws 1987, LB 32, § 3.
- 81-1108.47. Repealed. Laws 1987, LB 32, § 3.
- 81-1108.48. Capitol furniture; sections; purposes.
- 81-1108.49. Original capitol furniture, defined.
- 81-1108.50. Office of the Nebraska Capitol Commission; identify and locate original capitol furniture.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-1108.51. Original capitol furniture; inventory.
- 81-1108.52. Original capitol furniture; returned to State Capitol.
- 81-1108.53. Original capitol furniture; repaired; maintained; assignment.
- 81-1108.54. State building division; purpose.
- 81-1108.55. Competitive bids; award to lowest responsible bidder; elements considered; procurement reports.
- 81-1108.56. State building division or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty.
- 81-1108.57. Centralization and coordination of real property; legislative intent.
- 81-1109. Director of Administrative Services; technical assistance to Governor; reports to Governor.
- 81-1110. Department of Administrative Services; accounting division; Accounting Administrator; qualifications; compensation.
- 81-1110.01. Accounting division; purpose.
- 81-1110.02. Repealed. Laws 2003, LB 11, § 1.
- 81-1110.03. Accounting Administrator; prepare schedule of fees.
- 81-1110.04. Accounting Division Revolving Fund; created; use; investment.
- 81-1110.05. Accounting division assessment payments; procedure.
- 81-1110.06. State Purchasing Card Distributive Fund; created; use; investment.
- 81-1111. Department of Administrative Services; Accounting Administrator; powers; duties; bureaus; created.
- 81-1111.01. Director of Administrative Services; preaudits authorized.
- 81-1111.02. Repealed. Laws 1988, LB 1079, § 9.
- 81-1111.03. Repealed. Laws 1988, LB 1079, § 9.
- 81-1111.04. Department of Administrative Services; Accounting Administrator; administratively establish funds.
- 81-1112. Department of Administrative Services; budget administrator; qualifications; compensation.
- 81-1112.01. Budget division; purpose.
- 81-1113. Budget division; powers; duties.
- 81-1113.01. State budgets; department and agency budget requests; budget forms and instructions; when distributed; additional forms.
- 81-1113.02. Repealed. Laws 1996, LB 966, § 4.
- 81-1114. Department of Administrative Services; building division; powers, duties, and responsibilities.
- 81-1114.01. Capital construction project; plan required; contents; revisions required; when; to whom submitted.
- 81-1114.02. Capital construction project; state building division; review and comment.
- 81-1115. Department of Administrative Services; budget division; budgetary planning; duties; responsibilities.
- 81-1116. Information management services division; administrator; qualifications; pay.
- 81-1116.01. Budget allowance; expend; restriction.
- 81-1116.02. Information management services division; purpose.
- 81-1117. Information management services administrator; powers, duties, and responsibilities; enumerated; restrictions on agency acquisitions; Information Management Revolving Fund; created; investment.
- 81-1117.01. Imprest Payroll Distributive Fund; created; use.
- 81-1117.02. Computer file data; release prohibited; written approval for release excepted; public records excepted.
- 81-1117.03. Computer file data; release; violations; penalties.
- 81-1117.04. Computer file data; public records defined.
- 81-1117.05. State employee; payment of wages; methods authorized.
- 81-1118. Materiel division; established; duties; administrator; branches; established.
- 81-1118.01. Materiel administrator; inventory record; state property; powers and duties.
- 81-1118.02. All officers, departments, and agencies; state property; inventory; how stamped; action to recover.
- 81-1118.03. Personal property; purchase or lease; approval; solicitation by Department of Administrative Services; duties.
- 81-1118.04. Materiel division; purposes.

## DEPARTMENT OF ADMINISTRATIVE SERVICES

### Section

- 81-1118.05. Materiel division; powers and duties.
- 81-1118.06. Materiel division; state purchasing bureau; purposes.
- 81-1118.07. State purchasing bureau; use reverse auction; powers and duties.
- 81-1119. Real property; purchases authorized.
- 81-1120. Materiel Division Revolving Fund; created; use; investment.
- 81-1120.01. Communications system; declaration of legislative purpose.
- 81-1120.02. Terms, defined.
- 81-1120.03. Office of Chief Information Officer; division of communications; creation; Director of Communications; appointment; qualifications.
- 81-1120.04. Transferred to section 81-1120.17.
- 81-1120.05. Transferred to section 81-1120.18.
- 81-1120.06. Transferred to section 81-1120.19.
- 81-1120.07. Transferred to section 81-1120.20.
- 81-1120.08. Transferred to section 81-1120.22.
- 81-1120.09. Transferred to section 81-1120.23.
- 81-1120.10. Transferred to section 81-1120.24.
- 81-1120.11. Transferred to section 81-1120.25.
- 81-1120.12. Transferred to section 81-1120.26.
- 81-1120.13. Transferred to section 81-1120.27.
- 81-1120.14. Transferred to section 81-1120.28.
- 81-1120.15. Director of Communications; powers, duties, and responsibilities.
- 81-1120.16. Director of Communications; powers and duties; investigation; report.
- 81-1120.17. Division of communications; powers and duties.
- 81-1120.18. Division of communications; form advisory boards; expenses.
- 81-1120.19. Division of communications; powers; limitation.
- 81-1120.20. Joint use of communications; departments; agencies; cooperation.
- 81-1120.21. Repealed. Laws 1994, LB 948, § 1.
- 81-1120.22. Director of Communications; develop system of billings and charges; payment; deposit.
- 81-1120.23. Communications Cash Fund; established; purpose; investment.
- 81-1120.24. Nebraska educational television network; exempt from sections; when.
- 81-1120.25. Emergency; Governor; direct assumption of control.
- 81-1120.26. Director of Communications; state or political subdivision; gifts, property; accept; purpose; procedure.
- 81-1120.27. Telecommunications system; uses; member of Legislature; long-distance calls; how made.
- 81-1120.28. Communications system; not to function as news agency; information; privileged; exceptions.
- 81-1120.29. Communications Revolving Fund; established; use; investment.
- 81-1120.30. Repealed. Laws 1986, LB 965, § 26.
- 81-1120.31. Repealed. Laws 1986, LB 965, § 26.
- 81-1120.32. Repealed. Laws 2000, LB 654, § 57.
- 81-1120.33. Repealed. Laws 2000, LB 654, § 57.
- 81-1120.34. Repealed. Laws 2000, LB 654, § 57.
- 81-1120.35. Transferred to section 86-551.
- 81-1120.36. Transferred to section 86-552.
- 81-1120.37. Transferred to section 86-562.
- 81-1120.38. Transferred to section 86-563.
- 81-1120.39. Repealed. Laws 2000, LB 654, § 57.
- 81-1120.40. Transferred to section 86-567.
- 81-1121. Warrants; preparation and issuance; funds transfer systems; payment by mistake; adjustment.
- 81-1122. Repealed. Laws 1995, LB 15, § 6.
- 81-1123. Repealed. Laws 1985, LB 12, § 1.
- 81-1124. Repealed. Laws 1985, LB 12, § 1.
- 81-1125. Repealed. Laws 1985, LB 12, § 1.
- 81-1125.01. Director of Administrative Services; reports and statements required; to whom made.
- 81-1126. United States Savings Bond; payroll deduction; procedure.
- 81-1127. United States Savings Bond; funds withheld; purchase of bonds.
- 81-1128. United States Savings Bond; withholding of funds; cease, when.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-1129. United States Savings Bond; administrator; relieved of liability.
- 81-1130. Repealed. Laws 1976, LB 442, § 10.
- 81-1131. Repealed. Laws 1986, LB 1080, § 1.
- 81-1132. Repealed. Laws 1986, LB 1080, § 1.
- 81-1133. Repealed. Laws 1986, LB 1080, § 1.
- 81-1134. Repealed. Laws 1986, LB 1080, § 1.
- 81-1135. Repealed. Laws 1986, LB 1080, § 1.
- 81-1136. Repealed. Laws 1985, LB 421, § 6.
- 81-1137. Repealed. Laws 1986, LB 1080, § 1.
- 81-1138. Repealed. Laws 1986, LB 1080, § 1.
- 81-1139. Public Works and Economic Act; acceptance by State of Nebraska; state agencies, participate in excess property program.
- 81-1139.01. Stone Office Building; Department of Administrative Services; Department of Health and Human Services; limitations.

### (b) STATE OFFICE WASTEPAPER RECYCLING

- 81-1140. Repealed. Laws 1986, LB 380, § 7.
- 81-1140.01. Transferred to section 81-1644.
- 81-1140.02. Transferred to section 81-1643.
- 81-1140.03. Transferred to section 81-1645.
- 81-1140.04. Transferred to section 81-1646.
- 81-1140.05. Transferred to section 81-1647.
- 81-1140.06. Transferred to section 81-1648.
- 81-1141. Repealed. Laws 1986, LB 380, § 7.
- 81-1142. Repealed. Laws 1986, LB 380, § 7.
- 81-1143. Repealed. Laws 1986, LB 380, § 7.
- 81-1144. Repealed. Laws 1986, LB 380, § 7.
- 81-1145. Repealed. Laws 1986, LB 380, § 7.
- 81-1146. Repealed. Laws 1986, LB 380, § 7.
- 81-1147. Repealed. Laws 1986, LB 380, § 7.
- 81-1148. Repealed. Laws 1986, LB 380, § 7.
- 81-1149. Repealed. Laws 1986, LB 380, § 7.
- 81-1150. Repealed. Laws 1986, LB 380, § 7.
- 81-1151. Repealed. Laws 1986, LB 380, § 7.
- 81-1152. Repealed. Laws 1986, LB 380, § 7.
- 81-1153. Repealed. Laws 1986, LB 380, § 7.
- 81-1154. Repealed. Laws 1986, LB 380, § 7.
- 81-1155. Repealed. Laws 1986, LB 380, § 7.
- 81-1156. Repealed. Laws 1986, LB 380, § 7.
- 81-1157. Repealed. Laws 1986, LB 380, § 7.
- 81-1158. Repealed. Laws 1986, LB 380, § 7.
- 81-1159. Repealed. Laws 1986, LB 380, § 7.
- 81-1160. Repealed. Laws 1986, LB 380, § 7.
- 81-1161. Repealed. Laws 1986, LB 380, § 7.

### (c) FORMS MANAGEMENT PROGRAM

- 81-1162. Repealed. Laws 2007, LB 256, § 17.
- 81-1163. Repealed. Laws 2007, LB 256, § 17.
- 81-1164. Repealed. Laws 2007, LB 256, § 17.
- 81-1165. Repealed. Laws 2007, LB 256, § 17.
- 81-1166. Repealed. Laws 2007, LB 256, § 17.
- 81-1167. Repealed. Laws 2007, LB 256, § 17.
- 81-1168. Repealed. Laws 2007, LB 256, § 17.
- 81-1169. Repealed. Laws 2007, LB 256, § 17.

### (d) REQUESTS FOR PAYMENTS FROM THE STATE

- 81-1170. Transferred to section 77-2106.03.
- 81-1170.01. Requests; examination and adjustment by department; warrants for mileage.
- 81-1170.02. Requests; second presentation prohibited.
- 81-1170.03. Request; allowance in part; issuance of warrant.

## Section

- 81-1170.04. Request for payment; form of vouchers.
- 81-1170.05. False statement; penalty.
- 81-1171. Debt or request; treatment as setoff; presentation to director; required.
- 81-1172. Repealed. Laws 1988, LB 864, § 72.
- 81-1173. Repealed. Laws 1988, LB 864, § 72.

## (e) PAYMENT OF EXPENSES

- 81-1174. Reimbursement for expenses; contents; automobile; airplane; statement required; receipts; limitation.
- 81-1175. Reimbursement for expenses; vouchers; written authorization; exceptions.
- 81-1176. Mileage; rates; how computed; adjustments; application.
- 81-1177. Uniform traveling expense account form; prescribed.
- 81-1178. Member of any commission, committee, or board created by statute; expenses; reimbursement; manner.
- 81-1179. Member of any commission, committee, or board created in compliance with federal action; expenses; reimbursement from federal funds.
- 81-1180. Member of any state commission, council, committee, or board; reimbursement for expenses; when.
- 81-1181. Reimbursement of expenses; retroactive effect.
- 81-1182. Conference expenses; payment; when.
- 81-1182.01. Volunteers and certain service providers; expenses; payment; when.

## (f) STATE GOVERNMENT RECYCLING MANAGEMENT ACT

- 81-1183. Act, how cited.
- 81-1184. Legislative intent.
- 81-1185. State government recyclable material, defined.
- 81-1186. Department; duties.
- 81-1187. Disposition of state government recyclable material.
- 81-1188. Resource Recovery Fund; created; use; investment.
- 81-1189. Rules and regulations.

## (g) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

- 81-1190. Transferred to section 86-501.
- 81-1191. Transferred to section 86-502.
- 81-1192. Transferred to section 86-525.
- 81-1193. Repealed. Laws 2000, LB 1349, § 14.
- 81-1194. Transferred to section 86-526.
- 81-1195. Transferred to section 86-527.
- 81-1196. Repealed. Laws 2000, LB 1349, § 14.
- 81-1196.01. Transferred to section 86-528.
- 81-1197. Repealed. Laws 2000, LB 1349, § 14.
- 81-1198. Repealed. Laws 2000, LB 1349, § 14.
- 81-1199. Transferred to section 86-529.
- 81-11,100. Repealed. Laws 2000, LB 1349, § 14.
- 81-11,101. Repealed. Laws 2000, LB 1349, § 14.
- 81-11,102. Transferred to section 86-530.
- 81-11,103. Repealed. Laws 2000, LB 1349, § 14.

## (h) PERFORMANCE EVALUATION FOR CERTAIN ADMINISTRATIVE HEADS

- 81-11,104. Performance evaluation process; department; duties; recommendations; cost.

## (i) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM REVOLVING FUND

- 81-11,105. Nebraska Public Safety Communication System Revolving Fund; created; use; investment.

## (a) GENERAL PROVISIONS

**81-1101 Department of Administrative Services; declaration of legislative purpose.**

The purposes of sections 11-119, 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 are to:

(1) Provide for the development and maintenance of a modern system of budgetary, inventory, and financial accounting;

(2) Provide for development and maintenance of such modern and economical methods and systems for record keeping, accounting, expenditure planning and control as may be possible through timely adoption of modern technological developments;

(3) Provide for centralized direction of services and service agencies;

(4) Assure the development and operation of organizational and procedural innovations as may be expected to provide acceptable internal control of the handling and processing of public funds; and

(5) Focus responsibility for execution of the financial policies of this state on the chief executive and provide assistants having the necessary technical skills for the achievement of that end.

**Source:** Laws 1965, c. 538, § 1, p. 1689; Laws 1995, LB 15, § 1.

**81-1102 Terms, defined.**

For purposes of sections 11-119, 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304, unless the context otherwise requires:

(1) Gender with reference to the masculine or feminine gender shall be construed to apply to either or both genders;

(2) Executive budget shall mean the budget proposed by the Governor to the Legislature as the basis of appropriations for the operation of and capital outlay by state government during the period covered by such budget;

(3) Approved budget shall mean the executive or Governor's budget as modified by appropriations actions of the Legislature;

(4) Budgetary allotments shall mean the plan of expenditures, by program, subprogram, activity, or object of expenditure under the approved budget for monthly or other applicable periods of time within each fiscal year, to which a department or agency may be held during such period of time within the fiscal year;

(5) Accrual system shall mean the recording of revenue when earned and the recording of expenditures as soon as they result in liabilities, notwithstanding the fact that the receipt of the revenue or payment of the expenditure may take place, in whole or in part, in another accounting period;

(6) Double entry system shall mean a system of bookkeeping which requires for every entry made to the debit side of an account or accounts an entry for a corresponding amount or amounts to the credit side of another account or accounts resulting in a self-balancing accounting system;

(7) Disbursement shall mean payment from the state treasury;

(8) Expenditure shall mean, when an accrual system has been established, total liability incurred by contract, purchase order, or payroll commitments or as otherwise provided by law, whether or not related disbursement has been made from the state treasury, and shall mean, until an accrual system has been established, disbursements from the state treasury;

(9) Revenue shall mean, when an accrual system has been established, additions to assets which do not increase any liability or represent the recovery of an expenditure or disbursement or any part thereof or the cancellation of liabilities without a corresponding increase in other liabilities or a decrease in

assets. Until an accrual system has been established, this term shall mean additions to cash in the state treasury or for deposit in the state treasury only;

(10) Receipts shall mean cash received, unless otherwise qualified;

(11) Budgetary accounting shall mean a system of accounts designed to reflect budget operations and conditions such as estimated revenue, appropriations, and encumbrances as distinct from proprietary accounts designed to show the status of the assets, liabilities, and surplus of the state and its departments and agencies;

(12) Encumbrances shall mean charges to appropriation accounts to reflect obligations for which a part of the appropriation is reserved and which shall cease to be encumbrances when paid or when an actual liability is established in a proprietary account;

(13) Financing agreement shall mean any bond, lease-purchase obligation, installment sales contract, or similar financial arrangement, for a period greater than one year, which is entered into by the state or any agency, board, or commission thereof, not including the University of Nebraska or state colleges, in accordance with the Constitution of Nebraska and statutes of this state, relating to capital construction, real property acquisition, and personal property acquisition;

(14) Proprietary account shall mean those accounts designed to show actual financial position and operations such as actual assets, liabilities, surplus, revenue, and expenditures, as distinguished from budgetary accounts;

(15) Program shall mean a major operation of the state government directed toward the achievement of a definite legal objective and which, in most instances, could be carried on independently of other major operations of the state as defined and described in the accounting and budgeting manuals on file in the office of the Director of Administrative Services;

(16) Subprogram shall mean one or more operations of a department or agency of the state designed jointly to accomplish a major program objective as defined in the accounting and budgeting manuals on file in the office of the Director of Administrative Services;

(17) Activity shall mean one or more operations of a department or agency of the state designed jointly to accomplish the objective of a subprogram to which it is related as defined in the accounting and budgeting manual on file in the office of the Director of Administrative Services;

(18) Staffing pattern shall mean the number of positions in each class and the specific classes of positions as may be authorized for each department or agency for such department or agency programs, subprograms, and activities;

(19) Approved project shall mean any acquisition of land or buildings, any construction or major remodeling of new or newly acquired buildings or structures or of existing state-owned buildings or structures, excluding state highways or state roads or aeronautical projects, or any additions to buildings or structures of land owned by the state or its departments or agencies for which an appropriation or other act of the Legislature makes provision;

(20) Machine time shall mean the hours or fractions thereof of operation of each component of a machine data processing system together with the hours or fractions thereof of machine operator time for each such component devoted to the production of a report or tabulation or the processing of data necessary to such production and shall also include a proportional reflection of the hours

or fractions thereof of supervisory time so that all costs of operation of the information management services division may be reflected in billings to benefiting departments or agencies;

(21) Budget request shall mean the complete recitation, on forms prescribed by the budget division and in the manner prescribed by such division, of the operating and construction funds requests of a department or agency for the biennium next following the then current biennium;

(22) Department shall mean the Department of Administrative Services; and

(23) Director shall mean the Director of Administrative Services.

**Source:** Laws 1965, c. 538, § 2, p. 1690; Laws 1967, c. 593, § 1, p. 2014; Laws 1969, c. 804, § 1, p. 3029; Laws 1984, LB 933, § 15; Laws 1986, LB 258, § 36; Laws 1993, LB 544, § 1; Laws 1995, LB 15, § 2; Laws 1996, LB 1265, § 1; Laws 1998, LB 924, § 32.

**81-1103 Department of Administrative Services; creation; director; appointment; service.**

There is hereby created a department of government to be known as the Department of Administrative Services. The chief administrative officer of the department shall be the director to be known as the Director of Administrative Services. The director shall be appointed by the Governor, subject to confirmation by a majority vote of members of the Legislature. The director shall serve at the discretion of the Governor.

**Source:** Laws 1965, c. 538, § 3, p. 1693; Laws 1967, c. 578, § 2, p. 1909.

**81-1104 Director of Administrative Services; qualifications.**

Any person who is a graduate of an accredited four-year college or university program in public or business administration, arts, or sciences and who has had at least eight years of responsible management experience in development or administration of budgetary and accounting systems, management information systems, or systems and procedures planning, and who is not less than thirty years of age may be appointed as Director of Administrative Services. A masters or higher degree in the fields of public or business administration, economics, or statistics may be substituted for two years of experience as set forth above.

**Source:** Laws 1965, c. 538, § 4, p. 1694; Laws 1969, c. 805, § 1, p. 3042.

**81-1105 Director of Administrative Services; compensation.**

The compensation of the Director of Administrative Services shall be fixed by the Governor, subject to availability of appropriations.

**Source:** Laws 1965, c. 538, § 5, p. 1694.

**81-1106 Director of Administrative Services; offices.**

The Director of Administrative Services and the staff and division heads of such divisions as may be established within the Department of Administrative Services shall be housed in the State Capitol building or a state office building in the vicinity of the State Capitol building.

**Source:** Laws 1965, c. 538, § 6, p. 1694.

**81-1107 Director of Administrative Services; duties, powers, and responsibilities.**

The Director of Administrative Services is hereby vested with the duties, powers, and responsibilities involved in:

(1) The preparation of the executive budget and execution of the approved budget except as otherwise provided by law, including a system of periodic allotments for the management and regulation of expenditures and making surveys and studies for the purpose of improving administrative procedures, methods, and organization;

(2) The keeping of general accounts and the adoption and promulgation of appropriate rules, regulations, and administrative orders designed to assure a uniform and effective system of accounts and accounting, the approval of all vouchers, and the preparation and issuance of warrants for all purposes;

(3) The review and approval of financing agreements for the purposes of protecting the credit of the state, insuring the most advantageous terms, providing for proper accounting of financial transactions, complying with the approved budget, and promoting sound financial management.

Financing agreements related to real property acquisitions and capital construction projects within the Nebraska State Capitol Environs District, other than the State Capitol and capitol grounds, may be financed, if determined appropriate by the director, subject to legislative appropriation. Real property acquisitions or capital construction projects within the Nebraska State Capitol Environs District, other than the State Capitol and capitol grounds, shall not proceed without legislative appropriation and shall require the approval of both the Governor and the Executive Board of the Legislative Council.

Financing agreements related to real property acquisition and capital construction (a) for the State Capitol and capitol grounds or (b) outside the Nebraska State Capitol Environs District, shall not be financed without the express approval of the Legislature, and such legislative authorization shall include the maximum financing period for any project to be financed. The approval of such projects shall be through the capital construction budget process and shall be subject to legislative appropriation;

(4) The operation of such storerooms and warehouses as may be necessary;

(5) The allotment of space in state office buildings, other than the State Capitol, to the various departments and agencies according to their needs and the space available;

(6) The supervision of telephone, mailing, messenger, duplicating, data processing, and other like services adaptable to economical and centralized management;

(7) The planning, review, and preparation of a state capital construction budget;

(8) The development, maintenance, and operation of a statewide intergovernmental data services system; and

(9) The provision of assistance as requested by the Nebraska Information Technology Commission.

The director shall adopt a seal. The director may contract with another state agency to furnish centralized mailing, messenger, duplicating, and printing

services in the interest of economy and efficiency in government while retaining ultimate direction and control.

**Source:** Laws 1965, c. 538, § 7, p. 1694; Laws 1975, LB 447, § 7; Laws 1989, LB 27, § 1; Laws 1993, LB 543, § 6; Laws 1993, LB 544, § 2; Laws 1995, LB 530, § 4; Laws 1996, LB 1265, § 2; Laws 1998, LB 924, § 33; Laws 2004, LB 439, § 17.

**Cross References**

Nebraska State Capitol Environs District, see section 90-303.

**81-1107.01 Director of Administrative Services; accountant; record keeper.**

The Director of Administrative Services is declared to be the general accountant of the state, and the keeper of all public accounts books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the state, and its revenue, debt and fiscal affairs, not required by law to be placed in some other office or kept by some other officer or person.

**Source:** R.S.1866, c. 4, § 2, p. 19; R.S.1913, § 5544; C.S.1922, § 4846; C.S.1929, § 84-302; R.S.1943, § 84-302; R.S.1943, (1981), § 84-302.

Under former act, Auditor of Public Accounts was necessary party to declaratory judgment action testing constitutionality of statute. *Haynes v. Anderson*, 163 Neb. 50, 77 N.W.2d 674 (1956).

The Auditor of Public Accounts represents the state in settlements between the State Treasurer and county treasurers. *State v. Ure*, 102 Neb. 648, 168 N.W. 644 (1918).

**81-1107.02 Director of Administrative Services; settlement of accounts; powers.**

The Director of Administrative Services, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses or others, on oath or affirmation, touching any matter material to be known in the settlement of such account.

**Source:** R.S.1866, c. 4, § 7, p. 23; R.S.1913, § 5549; C.S.1922, § 4851; C.S.1929, § 84-307; R.S.1943, § 84-307; R.S.1943, (1981), § 84-307.

Under former law, Auditor of Public Accounts was authorized to inquire of parties interested and to call and examine wit-

nesses with respect to facts before issuance of warrant. *Fischer v. Marsh*, 113 Neb. 153, 202 N.W. 422 (1925).

**81-1107.03 Director of Administrative Services; records; copies; fee; maintenance.**

All accounts, vouchers, and documents settled or to be settled by the Director of Administrative Services shall be of record in his or her office and copies thereof, authenticated by his or her official seal, shall be furnished to any person interested therein who shall require the same, upon the payment to the director of an amount established by the director, not to exceed actual costs for every copy. Such records may be maintained in any acceptable photographic form in lieu of the original record pursuant to section 25-1281 when authorization is given by the State Records Administrator.

**Source:** R.S.1866, c. 4, § 8, p. 23; R.S.1913, § 5550; C.S.1922; § 4852; C.S.1929, § 84-308; Laws 1941, c. 190, § 1, p. 759; C.S.Supp.,1941, § 84-308; R.S.1943, § 84-308; Laws 1955, c. 348, § 1, p. 1067; Laws 1973, LB 224, § 13; Laws 1984, LB 933, § 18; R.S.Supp.,1986, § 84-308.

**81-1107.04 Director of Administrative Services; books and records; open to inspection.**

All the books, papers, letters and transactions pertaining to the office of Director of Administrative Services shall be open to the inspection of a committee of the Legislature, which shall examine and settle all the director's accounts.

**Source:** R.S.1866, c. 4, § 14, p. 24; R.S.1913, § 5555; C.S.1922, § 4857; C.S.1929, § 84-313; R.S.1943, § 84-313; R.S.1943, (1981), § 84-313.

**81-1107.05 Director of Administrative Services; interfund borrowing; powers and duties.**

(1) The Director of Administrative Services may initiate interfund borrowing among the various revolving funds within the Department of Administrative Services, except that at no time shall the aggregate advances from all lending funds exceed five hundred thousand dollars.

(2) The director shall report to the budget administrator of the budget division of the department and the Legislative Fiscal Analyst:

(a) The amount of each interfund loan processed or repaid and the date of the transaction; and

(b) An explanation of each interfund loan transaction.

The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

(3) By July 15 each year, the director shall report to the budget administrator and the Legislative Fiscal Analyst the:

(a) Outstanding aggregate balances advanced from the respective revolving funds within the department as of the preceding June 30; and

(b) Outstanding aggregate balances borrowed by each fund from the respective revolving funds within the department as of the preceding June 30.

The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

**Source:** Laws 2001, LB 96, § 2; Laws 2012, LB782, § 179.

**81-1108 Department of Administrative Services; divisions; Director of Administrative Services; appointment of division heads; delegation of authority.**

The Department of Administrative Services shall fulfill the functions in the administration of state government of fiscal control, of centralizing services, of personnel services, and of risk management. There shall be separate divisions within the department to assist in fulfilling these functions. The divisions shall be the accounting division and the budget division in the area of fiscal control, the information management services division, materiel division, state building division, and division of communications in the area of centralized services, the personnel division and the Division of Employee Relations in the area of personnel services, and the risk management and state claims division in the area of risk management. The Director of Administrative Services shall appoint a separate administrator as head of each division other than the Division of Employee Relations, the division of communications, and the information management services division. The director shall have the responsibility and

authority for directing and coordinating the programs and activities of the several divisions and shall be empowered to remove the administrators of any of the several divisions other than the Chief Negotiator at his or her discretion. The director shall have the power to delegate authority for administration of sections 81-1101 to 81-1189 and 81-1301 to 81-1391 and the Risk Management Program to any of the division heads as he or she may deem appropriate except as otherwise provided by law.

**Source:** Laws 1965, c. 538, § 8, p. 1965; Laws 1967, c. 593, § 2, p. 2017; Laws 1969, c. 804, § 2, p. 3032; Laws 1971, LB 675, § 2; Laws 1974, LB 1048, § 32; Laws 1992, Third Spec. Sess., LB 14, § 8; Laws 1993, LB 543, § 7; Laws 1998, LB 924, § 34; Laws 2000, LB 654, § 23; Laws 2002, LB 406, § 1; Laws 2006, LB 921, § 1.

**Cross References**

Risk Management Program, see section 81-8,239.01.

**81-1108.01 Administrator of divisions; compensation.**

The compensation of the administrators of the division of communications and the information management services division shall be fixed by the Chief Information Officer subject to availability of appropriations. The compensation of all other administrators shall be fixed by the director subject to availability of appropriations.

**Source:** Laws 1969, c. 804, § 3, p. 3033; Laws 2006, LB 921, § 2.

**81-1108.02 Department of Administrative Services Revolving Fund; created; use; investment.**

There is hereby created the Department of Administrative Services Revolving Fund. The fund shall be administered by the Department of Administrative Services. The fund shall consist of assessments against each division within the department and miscellaneous fees for services provided by the department. The money in the fund shall be used to defray the administrative expenses incurred 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 1994, LB 1194, § 1; Laws 1995, LB 7, § 116.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1108.03 Master Lease Program Trust Fund; created; use; investment.**

The Master Lease Program Trust Fund is created. The fund shall consist of lease payments made by state agencies and shall be used to pay any lessor who is a party to any financing agreement sponsored by the Department of Administrative Services. The fund shall be administered by the Accounting Administrator. 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. On a monthly basis the accounting division of the Department of Administrative Services shall administratively

transfer all interest earnings credited to the fund to the Accounting Division Revolving Fund within ten days after the end of each month.

**Source:** Laws 1997, LB 314, § 7; Laws 2000, LB 1216, § 23.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1108.04 Transferred to section 81-1108.12.**

**81-1108.05 Repealed. Laws 2001, LB 96, § 8.**

**81-1108.06 Transferred to section 81-1108.41.**

**81-1108.07 Transferred to section 81-1108.42.**

**81-1108.08 Transferred to section 81-1108.43.**

**81-1108.09 Sections; exceptions.**

Nothing in sections 81-1108.09 and 81-1108.41 to 81-1108.43 shall apply to any actions of the Legislature in contracting for the planning, design, construction, or leasing of capital facilities for any state use.

**Source:** Laws 1969, c. 772, § 7, p. 2925; Laws 1974, LB 1048, § 37.

**81-1108.10 Terms, defined.**

As used in sections 81-1108, 81-1108.02, 81-1108.09 to 81-1108.43, 81-1118.01, 81-1118.02, and 81-1120.22, unless the context otherwise requires:

(1) Division shall mean the state building division charged with the responsibility of statewide facilities planning, facilities construction, and statewide facilities administration, which division shall be a part of and subject to the supervision of the office of the Director of Administrative Services; and

(2) Administrator shall mean the State Building Administrator.

**Source:** Laws 1974, LB 1048, § 1; Laws 1998, LB 1129, § 19.

**81-1108.11 Department of Administrative Services; state building division; State Building Administrator; compensation.**

There is hereby established a division within the Department of Administrative Services to be known as the state building division, to be headed by a State Building Administrator appointed by the Director of Administrative Services. The compensation of such administrator shall be fixed by the Director of Administrative Services subject to availability of appropriations.

**Source:** Laws 1974, LB 1048, § 2.

**81-1108.12 State Building Administrator; qualifications.**

The State Building Administrator shall be a person who has (1)(a) a bachelor's degree or higher degree from an accredited college or university or (b) at least five years' experience in property management or building management and (2) at least four years' administrative experience in planning, design, or construction of major construction projects.

**Source:** Laws 1969, c. 772, § 2, p. 2923; R.R.S.1943, § 81-1108.04; Laws 1974, LB 1048, § 3; Laws 2010, LB721, § 1.

**81-1108.13 State Building Administrator; oath.**

The administrator shall, before entering upon the duties of his office, subscribe and take the constitutional oath of office, which shall be filed in the office of the Secretary of State.

**Source:** Laws 1974, LB 1048, § 4.

**81-1108.14 State Building Administrator; bond or insurance.**

The administrator shall, before entering upon the discharge of the duties of his office, be bonded or insured as required by section 11-201. The premium shall be paid by the state.

**Source:** Laws 1974, LB 1048, § 5; Laws 1978, LB 653, § 34; Laws 2004, LB 884, § 43.

**81-1108.15 State building division; functions and responsibilities; facilities planning, construction, and administration.**

(1) Except as provided in the Nebraska State Capitol Preservation and Restoration Act, the division shall have the primary functions and responsibilities of statewide facilities planning, facilities construction, and facilities administration and shall adopt and promulgate rules and regulations to carry out this section.

(2) Facilities planning shall include the following responsibilities and duties:

(a) To maintain utilization records of all state-owned, state-occupied, and vacant facilities;

(b) To coordinate comprehensive capital facilities planning;

(c) To define and review program statements based on space utilization standards;

(d) To prepare or review planning and construction documents;

(e) To develop and maintain time-cost schedules for capital construction projects;

(f) To assist the Governor and the Legislative Fiscal Analyst in the preparation of the capital construction budget recommendations;

(g) To maintain a complete inventory of all state-owned, state-occupied, and vacant sites and structures and to review the proposals for naming such sites and structures;

(h) To determine space needs of all state agencies and establish space-allocation standards; and

(i) To cause a state comprehensive capital facilities plan to be developed.

(3) Facilities construction shall include the following powers and duties:

(a) To maintain close contact with and inspections of each project so as to assure execution of time-cost schedules and efficient contract performance if such project's total design and construction cost is more than fifty thousand dollars;

(b) To perform final acceptance inspections and evaluations; and

(c) To coordinate all change or modification orders and progress payment orders.

(4) Facilities administration shall include the following powers and duties:

(a) To serve as state leasing administrator or agent for all facilities to be leased for use by the state and for all state-owned facilities to be rented to state agencies or other parties subject to section 81-1108.22. The division shall remit the proceeds from any rentals of state-owned facilities to the State Treasurer for credit to the State Building Revolving Fund and the State Building Renewal Assessment Fund;

(b) To provide all maintenance, repairs, custodial duties, security, and administration for all buildings and grounds owned or leased by the State of Nebraska except as provided in subsections (5) and (6) of this section;

(c) To be responsible for adequate parking and the designation of parking stalls or spaces, including access aisles, in offstreet parking facilities for the exclusive use of handicapped or disabled or temporarily handicapped or disabled persons pursuant to section 18-1737;

(d) To ensure that all state-owned, state-occupied, and vacant facilities are maintained or utilized to their maximum capacity or to dispose of such facilities through lease, sale, or demolition;

(e) To submit electronically an annual report to the Appropriations Committee of the Legislature and the Committee on Building Maintenance regarding the amount of property leased by the state and the availability of state-owned property for the needs of state agencies;

(f) To report monthly time-cost data on projects to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(g) To administer the State Emergency Capital Construction Contingency Fund;

(h) To submit status reports to the Governor and the Legislative Fiscal Analyst after each quarter of a construction project is completed detailing change orders and expenditures to date. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. Such reports shall be required on all projects costing five hundred thousand dollars or more and on such other projects as may be designated by the division; and

(i) To submit a final report on each project to the Governor and the Legislative Fiscal Analyst. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. Such report shall include, but not be limited to, a comparison of final costs and appropriations made for the project, change orders, and modifications and whether the construction complied with the related approved program statement. Such reports shall be required on all projects costing five hundred thousand dollars or more and on such other projects as may be designated by the division.

(5) Subdivisions (4)(b), (c), and (d) of this section shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (b) buildings and grounds owned or leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) buildings and grounds owned, leased, or operated by the Department of Correctional Services, (d) facilities to be leased for nonoffice use by the Department of Roads, (e) buildings or grounds owned or leased by the Game and Parks Commission if the application of such subdivisions to the buildings

or grounds would result in ineligibility for or repayment of federal funding, (f) buildings or grounds of the state park system, state recreation areas, state historical parks, state wildlife management areas, or state recreational trails, or (g) other buildings or grounds owned or leased by the State of Nebraska which are specifically exempted by the division because the application of such subdivisions would result in the ineligibility for federal funding or would result in hardship on an agency, board, or commission due to other exceptional or unusual circumstances, except that nothing in this subdivision shall prohibit the assessment of building rental depreciation charges to tenants of facilities owned by the state and under the direct control and maintenance of the division.

(6) 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 this section, shall be the responsibility of the Nebraska State Patrol. The Nebraska State Patrol shall consult with the Governor, the Chief Justice, the Executive Board of the Legislative Council, and the State Capitol Administrator regarding security policy within the State Capitol and capitol grounds.

(7) Each member of the Legislature shall receive an electronic copy of the reports required by subdivisions (4)(f), (h), and (i) of this section by making a request for them to the State Building Administrator. The information on such reports shall be submitted to the division by the agency responsible for the project.

**Source:** Laws 1974, LB 1048, § 6; Laws 1976, LB 1006, § 9; Laws 1979, LB 322, § 47; Laws 1981, LB 381, § 19; Laws 1987, LB 32, § 2; Laws 1992, LB 1241, § 21; Laws 1995, LB 530, § 5; Laws 1998, LB 299, § 4; Laws 2000, LB 1216, § 25; Laws 2001, LB 666, § 2; Laws 2001, LB 809, § 10; Laws 2004, LB 439, § 18; Laws 2004, LB 1092, § 8; Laws 2012, LB782, § 180.

**Cross References**

Nebraska State Capitol Preservation and Restoration Act, see section 72-2201.

**81-1108.16 State Building Administrator; review program statements and contracts; file reports; contents; lease; approval of Department of Administrative Services.**

(1) The administrator shall review program statements and contracts and file a written report on each program statement and contract reviewed pursuant to the provisions of section 81-1108.41. Such administrator shall file subsequent reviews and reports upon completion of the planning or design phase of the project indicating the compatibility of the project with capital construction plans, probable cost of the project, accepted cost standard, and the relationship of the project to the state comprehensive capital facilities plan and to other agency or departmental capital facilities pursuant to the provisions of section 81-1108.41.

(2) No contract for the leasing of real property shall be awarded without the approval of the Department of Administrative Services, and no such contract shall be awarded if:

(a) There is state-owned property which is adequate or which through cost-effective renovation, as determined by the division, could be made adequate to meet the using agency's needs; or

(b) It has not been arranged through the bidding process provided in rules and regulations adopted by the division. The rules and regulations shall be in accordance with sections 73-101, 81-1108.55, and 81-1108.56 and shall be otherwise consistent with sections 81-145 to 81-162 to the greatest extent possible.

All contracts for purchases or leases shall be open to inspection by the Legislature during normal business hours.

**Source:** Laws 1974, LB 1048, § 7; Laws 1975, LB 359, § 12; Laws 1979, LB 322, § 48; Laws 1981, LB 381, § 20; Laws 1992, LB 1241, § 22; Laws 1995, LB 530, § 6.

**81-1108.17 Department of Administrative Services; custodian of state property; director; administrator; powers and duties; Capitol Buildings Parking Revolving Fund; created; purpose; use.**

(1) The Department of Administrative Services shall be the custodian of the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act.

(2) To aid in the performance of his or her duties, the Director of Administrative Services shall appoint an administrator. The administrator, under the direction of the director, shall have complete control and all powers necessary to properly maintain the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act.

(3) Except as provided in the act, the administrator, under the direction of the director, is authorized to (a) lease space or provide facilities for the parking of state officers' and employees' vehicles as well as bureau fleet vehicles as defined in section 81-1011, (b) lease, rent, or permit for use as apartments, dwellings, offices, and parking areas any or all of the property acquired for parking or for future building needs, (c) lease state property to the federal government or political subdivisions of the state using the system of charges in subsection (4) of this section, and (d) lease state property to a private entity to provide services necessary for state operations or for the convenience of state officers and employees when the space is not needed for public use. All leases shall contain the provision that upon notice that such property is needed for public use, the use or occupancy of the property shall cease. All money received as rent from any property acquired shall be remitted to the State Treasurer and credited to the State Building Revolving Fund, except that receipts from parking charges for employee, public, and state vehicle parking shall be credited to the Capitol Buildings Parking Revolving Fund, which fund is hereby created, for the purposes of providing and maintaining parking for state employees and visitors.

(4) The system of charges for state buildings and facilities shall include an amount sufficient to (a) accurately reflect operating costs, including routine maintenance and repair costs, and (b) fund building renewal projects under the Deferred Building Renewal Act and renovation, remodeling, and repair projects beyond the scope of the act. The proceeds received under subdivision (a) of this

subsection shall be remitted to the State Treasurer for credit to the State Building Revolving Fund. The proceeds received under subdivision (b) of this subsection shall be remitted to the State Treasurer for credit to the State Building Renewal Assessment Fund. The administrator shall develop a system of equitable billings and charges for parking facilities under his or her control and used by state employees and state vehicles. The system of charges shall include an amount sufficient to cover the operating, maintenance, and repair costs associated with the parking facilities. The administrator, under policies and procedures established by the Director of Administrative Services, may expend funds from time to time credited to the Capitol Buildings Parking Revolving Fund for the purposes of obtaining, operating, and maintaining parking facilities for employees and visitors. All money derived from any source other than that to be credited to the State Building Revolving Fund, the Capitol Buildings Parking Revolving Fund, the Department of Administrative Services Cash Fund, the State Building Renewal Assessment Fund, or other appropriate revolving fund shall be remitted to the State Treasurer and credited to the General Fund.

(5) The administrator shall see that all parts and apartments of the buildings leased are properly ventilated and kept clean and in order.

(6) The administrator shall at all times have charge of and supervision over the police, janitors, and other employees in and about the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act. The administrator shall institute, in the name of the state and with the advice of the Attorney General, civil and criminal proceedings against any person for injury or threatened injury to any public property in the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska under his or her control, or for committing or threatening to commit a nuisance in or on the buildings or lands.

(7) The administrator shall keep in his or her office a complete record containing all plans and surveys of the state laboratory and grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska and of underground construction under such buildings and lands. This subsection shall not apply to the State Capitol and capitol grounds.

**Source:** Laws 1929, c. 192, § 1, p. 677; C.S.1929, § 72-707; Laws 1937, c. 161, § 1, p. 625; Laws 1939, c. 94, § 1, p. 407; Laws 1941, c. 144, § 1, p. 573; C.S.Supp.,1941, § 72-707; R.S.1943, § 72-706; Laws 1955, c. 278, § 1, p. 879; Laws 1961, c. 354, § 2, p. 1114; Laws 1965, c. 436, § 2, p. 1388; Laws 1965, c. 439, § 1, p. 1394; Laws 1965, c. 538, § 23, p. 1711; Laws 1967, c. 468, § 1, p. 1457; Laws 1971, LB 675, § 1; R.R.S.1943, § 72-706; Laws 1974, LB 1048, § 8; Laws 1976, LB 986, § 4; Laws 1979, LB 576, § 3; Laws 1981, LB 381, § 21; Laws 1983, LB 607, § 3; Laws 1993, LB 311, § 3; Laws 1995, LB 530, § 7; Laws 1997, LB 314, § 10; Laws 1998, LB 1100, § 21; Laws 2004, LB 439, § 19; Laws 2008, LB744, § 1; Laws 2009, LB207, § 3; Laws 2012, LB779, § 14.

## Cross References

Deferred Building Renewal Act, see section 81-190.

Nebraska State Capitol Preservation and Restoration Act, see section 72-2201.

**81-1108.18 State Building Administrator; parking of motor vehicles; rules and regulations; violations; personal responsibility for violation.**

In order to promote the public safety and welfare, the administrator shall adopt and promulgate rules and regulations governing the parking of motor vehicles on the (1) approaches to the capitol, in consultation with the State Capitol Administrator, and (2) lands owned or leased by the State of Nebraska and under the State Building Administrator's control. The rules and regulations may limit, restrict, or prohibit parking on such land. Notwithstanding the provisions of the Administrative Procedure Act, the rules and regulations shall become effective upon posting notice of the rules and regulations on or about the premises to be regulated. If any vehicle is found upon any regulated premises in violation of this section or the rules and regulations adopted pursuant to this section and the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be held responsible for such violation.

**Source:** Laws 1955, c. 278, § 2, p. 880; Laws 1965, c. 538, § 24, p. 1713; Laws 1967, c. 468, § 2, p. 1459; R.R.S.1943, § 72-706.01; Laws 1974, LB 1048, § 9; Laws 1976, LB 986, § 5; Laws 1977, LB 39, § 303; Laws 1979, LB 576, § 4; Laws 1995, LB 530, § 8; Laws 2004, LB 439, § 20.

## Cross References

Administrative Procedure Act, see section 84-920.

**81-1108.19 Repealed. Laws 1981, LB 545, § 52.****81-1108.20 Administrator; employees; supplies.**

The administrator, with the consent of the Governor, shall employ all necessary assistants, engineers, janitors, custodians, and caretakers, fix their compensation, and terminate such employment from time to time as necessary for the efficient and economical discharge of his or her duties. The administrator shall purchase, through the materiel division of the Department of Administrative Services, such supplies, material, and equipment as may be necessary for the proper maintenance of the state laboratory and laboratory grounds, the Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska except as exempted under subsections (5) and (6) of section 81-1108.15 or as provided in the Nebraska State Capitol Preservation and Restoration Act. The total expenditures for such purposes shall not exceed the appropriations made for such purposes.

**Source:** Laws 1929, c. 192, § 1, p. 677; C.S.1929, § 72-707; Laws 1937, c. 161, § 1, p. 625; Laws 1939, c. 94, § 1, p. 407; Laws 1941, c. 144, § 1, p. 573; C.S.Supp.,1941, § 72-707; R.S.1943, § 72-709; Laws 1955, c. 278, § 5, p. 882; R.R.S.1943, § 72-709; Laws 1974, LB 1048, § 11; Laws 1995, LB 530, § 9; Laws 2004, LB 439, § 21.

## Cross References

Nebraska State Capitol Preservation and Restoration Act, see section 72-2201.

**81-1108.21 Repealed. Laws 2004, LB 439, § 33.**

**81-1108.22 State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed; administrator; duties; State Building Revolving Fund; created; use; investment; applicability of section, when.**

(1) The division shall have the responsibility of providing office space in leased and state-owned buildings in the proximity of the State Capitol and in other locations.

(2) When any board, agency, commission, or department of the state government not otherwise specifically authorized by law desires to use funds available for the purpose of renting office space outside of the State Capitol, it shall submit a request to the Director of Administrative Services. If the director approves the lease, the terms and location shall be approved by the director and the administrator in writing and the leases shall be entered into and administered by the administrator on behalf of the board, agency, commission, or department. A copy of all such lease contracts shall be kept on file by the state building division and shall be open to inspection by the Legislature and the public during normal business hours.

(3)(a) The administrator shall develop a system of charges to cover basic rental, maintenance, renovations, and operation of such leased and owned properties. The charges to state agencies, boards, commissions, or departments of state government shall be paid from funds available for the purpose of renting space on a regular basis and placed, as applicable, in the State Building Revolving Fund and the State Building Renewal Assessment Fund. The administrator shall make payments for basic rentals, renovations, and maintenance and operational costs of all leased and owned buildings from the State Building Revolving Fund except for expenses relating to security provided by the Nebraska State Patrol as provided in subdivision (b) of this subsection.

(b) The State Building Revolving Fund is created. The fund shall be administered by the administrator. The fund shall consist of rental charges and other receipts collected pursuant to contractual agreements between the state building division and other entities as authorized by law. The fund shall only be used to support the operation of the state building division as provided by law, except that the Legislature shall make fund transfers each fiscal year through the budget process from the State Building Revolving Fund to the Capitol Security Revolving Fund to help pay non-general-fund costs associated with the operation of the state capitol security division of the Nebraska State Patrol. Any money in the State Building 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.

(4) The charges for such leased and owned properties shall only be adjusted by the administrator on July 1. Prior to any adjustment in the system of charges, the Department of Administrative Services, on or before December 1 of the year preceding the effective date of such adjustment, shall provide electronic notification to the Committee on Building Maintenance, the Clerk of the Legislature, and the Legislative Fiscal Analyst of the proposed adjustment to the system of charges.

(5) Commencing on April 18, 1992, all leases of real property entered into by any state agency, board, commission, or department shall be subject to this

section. Leases held by a state agency, board, commission, or department on such date shall be valid until the lease contract is terminated or is subject to renewal. The division shall monitor all such leases and determine when the lease is subject to renewal. Once the determination is made, the division shall cancel the lease as of the renewal date and shall treat the need of the agency, board, commission, or department as an original request for space and subject to this section. This subsection shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (b) facilities to be leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) facilities to be leased for nonoffice use by the Department of Roads, or (d) facilities controlled by the State Department of Education, which were formerly controlled by the Nebraska School for the Visually Handicapped, to be rented to state agencies or other parties by the department.

**Source:** Laws 1961, c. 353, § 1, p. 1113; Laws 1963, c. 421, § 1, p. 1347; R.R.S.1943, § 72-701.08; Laws 1974, LB 1048, § 13; Laws 1975, LB 359, § 13; Laws 1979, LB 576, § 5; Laws 1992, LB 1241, § 23; Laws 1995, LB 530, § 11; Laws 1998, LB 1100, § 22; Laws 1999, LB 813, § 57; Laws 2004, LB 439, § 22; Laws 2004, LB 1092, § 9; Laws 2007, LB322, § 26; Laws 2012, LB782, § 181.

#### Cross References

**Committee on Building Maintenance**, see section 81-185.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

### **81-1108.23 Administrator; personnel.**

The administrator may employ architects, drafters, specialized engineers, and other professional personnel to provide plans, working drawings, and specifications required for the adequate maintenance, improvement, construction, and reconstruction of the state laboratory and grounds, Governor's Mansion and grounds, and all other buildings and lands owned or leased by the State of Nebraska and under the administrator's control and may employ secretarial and administrative personnel necessary to carry out this section.

**Source:** Laws 1955, c. 329, § 2, p. 1027; R.R.S.1943, § 72-709.02; Laws 1974, LB 1048, § 14; Laws 1995, LB 530, § 12; Laws 2004, LB 439, § 23.

### **81-1108.24 State Emergency Capital Construction Contingency Fund; created; investment.**

There is hereby created for the use of the Department of Administrative Services a fund to be known as the State Emergency Capital Construction Contingency Fund, to consist of such money as shall be appropriated to such fund by the Legislature. 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 1974, LB 1048, § 15; Laws 1995, LB 7, § 117.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1108.25 State Emergency Capital Construction Contingency Fund; purpose.**

The proceeds of the State Emergency Capital Construction Contingency Fund created by section 81-1108.24 shall be expended by the Department of Administrative Services as and when approved by the Governor. Such proceeds shall be expended to supplement available funds for construction projects when needed for emergency construction, repair, or remodeling. For the purposes of this section emergency shall mean that a clear and foreseeable danger is created and that without institution of appropriate measures to reduce or alleviate such danger the health, safety, or welfare of the citizens of this state or the purposes of the facility will be or will continue to be threatened.

**Source:** Laws 1974, LB 1048, § 16.

**81-1108.26 University of Nebraska; heat and power plant; control; use; costs.**

The heat and power plant of the University of Nebraska, together with tunnels and conduits appurtenant thereto, shall be operated and maintained under the immediate control of the Board of Regents of the University of Nebraska. Such plant shall supply heat, light, and power for use at the University of Nebraska, the State Capitol, including the executive mansion, and the Nebraska State Historical Society. At the sole discretion of the Director of Administrative Services, in consultation with the Board of Regents, alternative sources of heat, power, and light may be utilized, and in such event, adequate notice of any change shall be given to the Board of Regents. Cost of operation and maintenance of the plant and its appurtenances shall in the first instance be borne by the Board of Regents. The cost of operation, repairs, and maintenance shall be apportioned between the University of Nebraska, the State Capitol, including the executive mansion, and the Nebraska State Historical Society, upon the percentage of heat, light, and power received by each. At the end of each month, the Board of Regents shall forward to the administrator a bill for the share of the cost of operation for such month chargeable to the State Capitol, including the executive mansion, and to the superintendent of the Nebraska State Historical Society for the share of the cost of operation for such month chargeable to the Nebraska State Historical Society. The Board of Regents shall forward annually to the administrator a statement for the share of the cost of repairs and maintenance chargeable to the State Capitol, including the executive mansion, and to the superintendent of the Nebraska State Historical Society for the share of the cost of repairs and maintenance chargeable to the Nebraska State Historical Society. If no objection in writing is made by the administrator or the superintendent of the Nebraska State Historical Society within ten days after the receipt of such statements, they shall constitute valid obligations to be paid in the manner prescribed by law for payment of operating expenses of the State Capitol and by the Nebraska State Historical Society from funds appropriated for that purpose by the Legislature. In case objection shall be made, the Board of Regents and the administrator or the superintendent of the Nebraska State Historical Society, whichever shall object, shall endeavor to arrive at a proper charge and, in case of inability to do so, shall submit the matter to arbitration, one arbitrator to be named by each party

and the third to be chosen by those so named. The amount fixed by the arbitrators shall constitute a valid obligation to be paid in the manner indicated above.

**Source:** Laws 1929, c. 193, § 2, p. 678; C.S.1929, § 72-902; R.S.1943, § 72-710; Laws 1949, c. 216, § 1, p. 613; Laws 1951, c. 240, § 1, p. 847; R.R.S.1943, § 72-710; Laws 1974, LB 1048, § 17; Laws 1998, LB 1129, § 20.

**81-1108.27 State Capitol; state buildings; electric current; agreement.**

The Board of Regents of the University of Nebraska is authorized to furnish and to enter into agreements with the Department of Health and Human Services and the Department of Correctional Services to furnish a supply of electric current to such departments at the line now maintained or hereafter constructed between the electric power plant at the Department of Correctional Services adult correctional facility and the State Capitol, which power shall be furnished by the heating plant located upon the city campus of the University of Nebraska at Lincoln, except that such electrical service to the Department of Health and Human Services and the Department of Correctional Services for distribution to other state buildings and institutions shall be furnished only if the same may be generated and furnished without impairment or reduction of the power necessary to proper and efficient operation of the University of Nebraska and the State Capitol, including the executive mansion.

**Source:** Laws 1949, c. 216, § 2, p. 614; Laws 1973, LB 563, § 10; R.R.S.1943, § 72-710.01; Laws 1974, LB 1048, § 18; Laws 1996, LB 1044, § 863.

**81-1108.28 Board of Regents; Department of Health and Human Services and Department of Correctional Services; electric current; agreements.**

The Department of Health and Human Services and the Department of Correctional Services are authorized to furnish and to enter into agreements with the Board of Regents of the University of Nebraska to furnish a supply of electric current to the Board of Regents of the University of Nebraska at the line now maintained, or hereafter constructed, between the electric power plant at the University of Nebraska and the State Capitol, which power shall be furnished by the electric power plant located at the Department of Correctional Services adult correctional facility, except that such electrical service to the Board of Regents shall be furnished only if the same may be generated and furnished without impairment or reduction of the power necessary to proper and efficient operation of state buildings and institutions dependent upon the Department of Correctional Services adult correctional facility power plant.

**Source:** Laws 1949, c. 216, § 3, p. 614; Laws 1973, LB 563, § 11; R.R.S.1943, § 72-710.02; Laws 1974, LB 1048, § 19; Laws 1996, LB 1044, § 864.

**81-1108.29 Board of Regents; Department of Administrative Services; heat, light, power; furnish; agreement.**

The Board of Regents of the University of Nebraska is authorized to furnish and to enter into agreements with the Department of Administrative Services to furnish heat, light, and power for use at any building leased by the State of

Nebraska. Any such agreement shall provide for the apportionment of costs in the same manner as is provided in section 81-1108.26.

**Source:** Laws 1967, c. 468, § 7, p. 1461; R.R.S.1943, § 72-710.03; Laws 1974, LB 1048, § 20.

**81-1108.30 Nebraska State Fairgrounds; electric current; University of Nebraska may supply; when.**

The Board of Regents of the University of Nebraska is authorized to furnish and to enter into agreements with the Nebraska State Fair Board to furnish a supply of electric current to the Nebraska State Fairgrounds and buildings, which shall be furnished by the heating plant located upon the city campus of the University of Nebraska at Lincoln, except that such electric service shall be furnished only if the same may be generated and furnished without impairment or reduction of the power necessary to proper and efficient operation of the University of Nebraska and the State Capitol, including the executive mansion.

**Source:** Laws 1931, c. 62, § 1, p. 170; C.S.Supp.,1941, § 72-905; R.S. 1943, § 72-711; Laws 1949, c. 216, § 4, p. 615; R.R.S.1943, § 72-711; Laws 1974, LB 1048, § 21; Laws 2002, LB 1236, § 19.

**81-1108.31 State Capitol improvement district; powers.**

Whenever any improvement district for the opening, widening, or otherwise improving Fifteenth Street in the city of Lincoln, Nebraska, which connects, adjoins, and is adjacent to the State Capitol and the University of Nebraska, is created by the Mayor and the City Council of the city of Lincoln, Nebraska, the President of the Board of Regents of the University of Nebraska and the State Capitol Administrator are hereby authorized to sign petitions for the creation of an improvement district including that portion of Fifteenth Street in Lincoln, Nebraska, leading from the State Capitol to the university campus. This is for no other purpose than to form a plan and program, with the gathering of data and cost for the improvement of that portion of Fifteenth Street. Such plan shall be submitted electronically to the Legislature which shall render its approval or rejection before any liability whatsoever for the consummation of such plan shall be fixed or made. Neither the Board of Regents of the University of Nebraska nor the administrator shall expend any money, nor shall the provisions of this section be construed to authorize the expenditure of any public funds whatsoever, except for the preliminary survey incident to the formation of such improvement plans, until the same shall have been authorized by a specific appropriation of the Legislature for the purpose based on the tentative plans so formulated and submitted to the Legislature as contemplated in this section.

**Source:** Laws 1927, c. 147, § 1, p. 396; C.S.1929, § 72-801; R.S.1943, § 72-712; Laws 1974, LB 1048, § 22; Laws 2004, LB 439, § 24; Laws 2012, LB782, § 182.

**81-1108.32 Nebraska Capitol Commission; creation; members; appointment; expenses.**

The Nebraska Capitol Commission is hereby created. The commission shall consist of the Governor, the Speaker of the Legislature, the Chief Justice of the Supreme Court, the dean of the College of Architecture at the University of Nebraska-Lincoln, the Director of the Nebraska State Historical Society, and

three other residents of Nebraska appointed by the Governor. One appointive member shall be appointed from each congressional district. The terms of the appointive members shall be staggered so that one term expires on March 1, 1994, one term expires on March 1, 1995, and one term expires on March 1, 1996. As the terms of the appointive members expire, the Governor shall, on or before March 1 of each year, appoint or reappoint a member of the commission for a term of three years to succeed the member whose term expires. Any member appointed after March 1 shall serve for the remaining portion of the three-year term.

The Governor shall serve as the chairperson of the Nebraska Capitol Commission, the Speaker of the Legislature shall serve as the vice-chairperson of the commission, and the State Capitol Administrator or his or her representative shall serve as the nonvoting secretary of the commission.

In the absence of the Governor, he or she may designate the Lieutenant Governor as his or her representative. In the absence of the Speaker of the Legislature, he or she may designate the chairperson of the Executive Board of the Legislative Council or the Clerk of the Legislature as his or her representative. In the absence of the Chief Justice of the Supreme Court, he or she may designate the State Court Administrator as his or her representative. Representatives of the Governor, the Speaker of the Legislature, and the Chief Justice shall have full voting privileges for the meeting in attendance.

The members of such commission shall be reimbursed for their actual and necessary expenses while away from home engaged in the performance of their duties as members of the commission as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1949, c. 211, § 1, p. 601; Laws 1965, c. 440, § 1, p. 1396; R.R.S.1943, § 72-716; Laws 1974, LB 1048, § 23; Laws 1981, LB 204, § 189; Laws 1993, LB 311, § 4; Laws 1999, LB 297, § 1; Laws 2004, LB 439, § 25; Laws 2005, LB 684, § 4; Laws 2008, LB752, § 1; Laws 2012, LB1116, § 1.

**81-1108.33 State building division; Task Force for Building Renewal; reviews required; report; approval; when required.**

(1) It is the intent of the Legislature that the state will not assume responsibility for the substandard construction, repair, or maintenance of, or for the excessive maintenance or repair costs for, real property, structures, or improvements which will be made available by gift, bequest, or devise to any state agency, board, or commission or real property or structures acquired by any state agency, board, or commission with the proceeds of donations, gifts, bequests, devises, or grants from individuals, organizations, corporations, foundations, or similar entities or from nonfederal governmental agencies. Therefore, any such gift, bequest, devise, or acquisition of such real property, structure, or improvement shall be reviewed and approved as provided in this section as a requirement for acceptance or acquisition by the state of such real property, structure, or improvement.

(2)(a) Any gift of, bequest of, or devise of real property, a structure, or an improvement proposed to be made available to any state agency, board, or commission in excess of ten thousand dollars and any acquisition of real property or structures with the proceeds of donations, gifts, bequests, devises, or grants from individuals, organizations, corporations, foundations, or similar

entities or from nonfederal governmental agencies, if the combined proceeds of such donations, gifts, bequests, devises, or grants exceed two hundred fifty thousand dollars, shall be reviewed by the state building division and the Task Force for Building Renewal pursuant to sections 81-176, 81-1108.15, and 81-1114. Such review shall include any potential matching of state funds, any plans, specifications, and other construction or repair documents, and any potential maintenance requirements as a condition of acceptance or acquisition. Subsequent to such review, the state building division and the task force shall submit a report to the Governor, the Committee on Building Maintenance, and the Legislative Fiscal Analyst including a summary of the review of the plans, specifications, and other construction or repair documents and potential maintenance requirements and outlining the terms and conditions of the proposed gift, bequest, devise, or acquisition along with its recommendation. The report submitted to the committee and the Legislative Fiscal Analyst shall be submitted electronically.

(b)(i) Any proposed gift of, bequest of, or devise of real property, a structure, or an improvement in excess of ten thousand dollars shall be approved by the Governor and the Legislature prior to acceptance.

(ii) Any acquisition of real property or structures with the proceeds of donations, gifts, bequests, devises, or grants from individuals, organizations, corporations, foundations, or similar entities or from nonfederal governmental agencies, if the combined proceeds of such donations, gifts, bequests, devises, or grants exceed two hundred fifty thousand dollars, shall be approved by the Governor and Legislature prior to such acquisition.

(iii) If the Legislature is not in session, the Executive Board of the Legislative Council, after recommendation by the Committee on Building Maintenance, may approve such gift, bequest, devise, or acquisition along with the Governor.

(c) No construction, repair, maintenance, or other work related to the proposed gift, bequest, devise, or acquisition shall be initiated prior to receiving the review and approval required by this section.

(3) For purposes of this section, gift of, bequest of, or devise of (a) real property, (b) a structure, or (c) an improvement shall include, but not be limited to, a donation of, gift of, bequest of, devise of, or grant of (i) real property, (ii) a structure, or (iii) an improvement from an individual, an organization, a corporation, a foundation, or a similar entity or from a nonfederal governmental agency. For purposes of this section, gift, bequest, or devise shall not include a donation, gift, bequest, devise, or grant of tangible or intangible personal property.

(4) This section shall not apply to the University of Nebraska or any Nebraska state college, since these agencies are subject to and participate in statewide facilities planning developed by the Coordinating Commission for Postsecondary Education pursuant to the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1995, LB 530, § 13; Laws 1999, LB 369, § 3; Laws 2006, LB 1038, § 2; Laws 2008, LB1116, § 8; Laws 2011, LB264, § 4; Laws 2012, LB761, § 2; Laws 2012, LB782, § 183.

#### Cross References

**Committee on Building Maintenance**, see section 81-185.

**Coordinating Commission for Postsecondary Education**, see Article VII, section 14, Constitution of Nebraska and section 85-1403.

**Coordinating Commission for Postsecondary Education Act**, see section 85-1401.

**81-1108.34 Repealed. Laws 1987, LB 32, § 3.****81-1108.35 Repealed. Laws 1987, LB 32, § 3.****81-1108.36 State-owned or leased sites or structures; naming.**

Except when sites or structures are named by statute, the administrator, after considering any recommendations of the Nebraska Capitol Commission, shall review the proposals of the various agencies and commissions for the naming of state-owned or leased sites or structures. Unless otherwise provided by statute, sites or structures shall not be named for citizens who are active elected officials or active employees of the State of Nebraska. Subsequent to review, the proposed name shall be approved by the Governor and the Legislature.

**Source:** Laws 1974, LB 1048, § 27; Laws 1978, LB 955, § 1; Laws 1981, LB 351, § 2; Laws 1993, LB 311, § 5.

**81-1108.37 Administrator; state office building; powers.**

After July 1, 1974, the administrator is authorized to enter into an agreement with the city of Lincoln, Nebraska, pursuant to the provisions of sections 72-1401 to 72-1408, providing for the supplying by the city of Lincoln to the State of Nebraska of a state office building to be located on block 91, original plat of Lincoln, Nebraska, and the providing of parking facilities for motor vehicles and related services on the north half of blocks 92 and 96, all in the original plat of Lincoln, Nebraska. The administrator is authorized to convey to the city of Lincoln all of the real estate described herein for the purposes described.

**Source:** Laws 1973, LB 447, § 2; R.S.Supp.,1973, § 72-716.04; Laws 1974, LB 1048, § 28.

**81-1108.38 Nebraska Capitol Commission; duties; powers.**

(1) It shall be the duty of the Nebraska Capitol Commission to provide advice to the Office of the Nebraska Capitol Commission in carrying out this section. The office shall (a) establish policies and guidelines for the implementation of the approved Capitol Landscape Restoration Master Plan on and around the capitol grounds, (b) participate with the commission created pursuant to section 90-306 to (i) formulate a landscape restoration plan for all other state-owned property within the Nebraska State Capitol Environs District and (ii) conserve, protect, and enhance the environs and vistas of the State Capitol, and (c) review the proposed construction and repairs of buildings in and around the State Capitol and all other state-owned property located within the Nebraska State Capitol Environs District. The office, with the advice of the Nebraska Capitol Commission, may adopt and promulgate rules and regulations to carry out this subsection.

(2) The commission shall hold meetings on a quarterly basis or as needed. The commission shall meet at least annually with the Nebraska State Capitol Environs Commission to discuss and coordinate projects that may impact the capitol and its environs. The meeting with the Nebraska State Capitol Environs Commission may be held in conjunction with one of the meetings of the Nebraska Capitol Commission required by this subsection.

(3) In addition to any other rights and powers conferred upon the commission, it shall monitor and advise the State Building Administrator in exercising

the power of eminent domain on behalf of the state for the purpose of acquiring sites or buildings for state use. The administrator may for such purpose take, hold, and condemn for the state any and all necessary property. The procedure to condemn property shall be exercised in the manner set forth in sections 76-701 to 76-726.

**Source:** Laws 1949, c. 211, § 3, p. 601; Laws 1955, c. 279, § 1, p. 883; Laws 1965, c. 440, § 2, p. 1397; Laws 1967, c. 469, § 1, p. 1462; R.R.S.1943, § 72-718; Laws 1974, LB 1048, § 29; Laws 1993, LB 311, § 6; Laws 1999, LB 297, § 2; Laws 2004, LB 439, § 26.

**81-1108.39 Repealed. Laws 1986, LB 746, § 1.**

**81-1108.40 Repealed. Laws 2009, LB 207, § 5.**

**81-1108.41 State comprehensive capital facilities plan; State Comprehensive Capital Facilities Planning Committee; program statement; appropriation for drawings and construction; contracts; approval; report; contents.**

(1) The division shall cause a state comprehensive capital facilities plan to be developed. The plan shall project the state's facilities needs for a period of six years and shall be based on programmatic projections and input from each state agency. To aid in the development of the plan, the Governor shall appoint a State Comprehensive Capital Facilities Planning Committee with representatives from various state agencies. The committee shall develop and adopt comprehensive planning guidelines and a process of project prioritization. The state comprehensive capital facilities plan shall be submitted electronically to the Committee on Building Maintenance for review before such plan shall be submitted to the Governor and the Legislative Fiscal Analyst on or before November 15 prior to the beginning of each biennium. The plan submitted to the Legislative Fiscal Analyst shall be submitted electronically. The plan shall be based on priorities developed by the State Comprehensive Capital Facilities Planning Committee. The University of Nebraska and any Nebraska state college shall not be required to comply with or be subject to the provisions of this section since these agencies are subject to and participate in statewide facilities planning developed by the Coordinating Commission for Postsecondary Education pursuant to the Coordinating Commission for Postsecondary Education Act.

(2) An appropriation for drawings and construction may be made only after submission of an acceptable program statement on or before September 15 of the year previous to the initiation of such appropriation. Such program statement shall include, but not be limited to, (a) an assessment of the compatibility of the project with the state comprehensive capital facilities plan and the agency or departmental comprehensive capital facilities plan, (b) the identification of the impact of the project on the space utilization of other facilities under the control of the agency or department, and (c) the identification of the future impact on the agency or departmental programmatic needs, demand for utilities in excess of current capacity, parking needs, street and road needs, and site acquisition needs. Such program statement shall be submitted to the division and the Legislative Fiscal Analyst. The program statement submitted to the Legislative Fiscal Analyst shall be submitted electronically.

(3) No contract for the planning, design, or construction of a new facility or major modification or repair of an existing facility provided for by any state

appropriation may be initiated unless an acceptable program statement has been approved by the Governor, the agency or department has submitted to the division a certificate from the Committee on Building Maintenance that there is no state-owned property which is adequate or which through cost-effective renovation, as determined by the division, could be made adequate to meet the agency's or department's needs, and the conditions of the contracts are approved in writing by the division, except that the provisions of this section shall not apply to projects when the total design and construction cost of the project is less than the limit established by the division. Such program statements and contracts shall be reviewed by the division.

(4) The division shall file a written report on each program statement and contract reviewed with the Governor and the Legislative Fiscal Analyst. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. This report shall cover the consistency of the project with the state comprehensive capital facilities plan and the agency or departmental comprehensive capital facilities plan. A subsequent review and report upon completion of the planning or design phase of the project shall indicate the compatibility of the project with the agency or departmental comprehensive capital facilities plan, compare the probable cost of the project with accepted cost standards for similar construction projects, and review the relationship of the project to other state agency or departmental capital facilities in the same complex.

**Source:** Laws 1969, c. 772, § 4, p. 2923; R.R.S.1943, § 81-1108.06; Laws 1974, LB 1048, § 34; Laws 1976, LB 986, § 7; Laws 1979, LB 38, § 1; Laws 1981, LB 381, § 22; Laws 1992, LB 1241, § 24; Laws 1995, LB 530, § 14; Laws 2000, LB 654, § 24; Laws 2012, LB782, § 184.

#### Cross References

**Committee on Building Maintenance**, see section 81-185.

**Coordinating Commission for Postsecondary Education**, see Article VII, section 14, Constitution of Nebraska and section 85-1403.

**Coordinating Commission for Postsecondary Education Act**, see section 85-1401.

These sections held not applicable to the Board of Regents which cannot delegate its constitutional powers and duties to other officers or agencies. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).

### **81-1108.42 Contract for construction, reconstruction, remodeling, or repair of capital facility; final payment; conditions.**

The Director of Administrative Services shall not issue his warrant for final payment for any contract for the construction, reconstruction, remodeling, or repair of any capital facility for any state agency or department unless there is on file in his office the certificate of a professional engineer or architect that, to the best of his knowledge, all work under the contract substantially conforms to the plans and specifications and that the contract has been fully and satisfactorily performed except for the making of the final payment.

**Source:** Laws 1969, c. 772, § 5, p. 2924; R.R.S.1943, § 81-1108.07; Laws 1974, LB 1048, § 35.

### **81-1108.43 Capital construction project; prohibited acts; exceptions; warrant; when issued.**

No state agency or department shall perform for itself any of the services normally performed by a professional engineer or architect in the preparation of plans and specifications for the construction, reconstruction, or alteration of any building or in the administration of the construction documents and final

approval of the project when the total project cost is four hundred thousand dollars or more, and no state agency shall employ its own work force for any such construction, reconstruction, or alteration of capital facilities when the total project cost is fifty thousand dollars or more. 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.

This section shall not apply to the Department of Roads or to any public power district, public power and irrigation district, irrigation district, or metropolitan utilities district. If, during the program statement review provided for under section 81-1108.41, it is determined that existing or standard plans and specifications are available or required for the project, the division may authorize an exemption from this section. The Director of Administrative Services shall not issue any warrant in payment for any work on a capital construction project unless the state agency or department files a certificate that it has complied with the provisions of this section.

**Source:** Laws 1969, c. 772, § 6, p. 2924; R.R.S.1943, § 81-1108.08; Laws 1974, LB 1048, § 36; Laws 1979, LB 38, § 2; Laws 1995, LB 530, § 15; Laws 1997, LB 622, § 122; Laws 1998, LB 1129, § 21; Laws 2007, LB256, § 13.

**81-1108.44 Repealed. Laws 1987, LB 32, § 3.**

**81-1108.45 Repealed. Laws 1987, LB 32, § 3.**

**81-1108.46 Repealed. Laws 1987, LB 32, § 3.**

**81-1108.47 Repealed. Laws 1987, LB 32, § 3.**

**81-1108.48 Capitol furniture; sections; purposes.**

The purposes of sections 81-1108.48 to 81-1108.53 are to:

- (1) Provide for identification and classification of all original capitol furniture;
- (2) Provide a central inventory of original capitol furniture;
- (3) Provide for the return of all identified original furniture to the capitol; and
- (4) Provide for distribution and assignment of original capitol furniture.

**Source:** Laws 1980, LB 885, § 1.

**81-1108.49 Original capitol furniture, defined.**

As used in sections 81-1108.48 to 81-1108.53, unless the context otherwise requires, original capitol furniture shall mean all furniture, furnishings, and accessories including, but not limited to, desks, chairs, files, tables, couches, bookcases, credenzas, lights, lamps, clocks, trash receptacles, and hall trees.

**Source:** Laws 1980, LB 885, § 2.

**81-1108.50 Office of the Nebraska Capitol Commission; identify and locate original capitol furniture.**

The Office of the Nebraska Capitol Commission shall identify all furniture originally purchased for the State Capitol. The office shall review the inventories and physical spaces of all agencies, boards, and commissions of the legislative, executive, and judicial branches to locate each item. From the items identified and located, the office shall establish a classification system identifying each item by style, type, and condition.

**Source:** Laws 1980, LB 885, § 3; Laws 2004, LB 439, § 27.

**81-1108.51 Original capitol furniture; inventory.**

The Office of the Nebraska Capitol Commission shall establish and maintain an inventory of all original furniture including, but not limited to, its style, type, condition, location, and assignment.

**Source:** Laws 1980, LB 885, § 4; Laws 2004, LB 439, § 28.

**81-1108.52 Original capitol furniture; returned to State Capitol.**

All agencies, boards, and commissions are directed to return all original capitol furniture to the State Capitol upon written notice by the State Capitol Administrator. Such furniture shall be surplused to the Office of the Nebraska Capitol Commission at no cost.

**Source:** Laws 1980, LB 885, § 5; Laws 2004, LB 439, § 29.

**81-1108.53 Original capitol furniture; repaired; maintained; assignment.**

All original capitol furniture shall be repaired and maintained by the Office of the Nebraska Capitol Commission and shall be made available to occupants of the State Capitol. Assignment of original furniture shall be made at the discretion of the State Capitol Administrator. The original furniture shall remain in the State Capitol at all times. Any agency that is relocated from the State Capitol shall make other provision for its furniture needs, and original furniture currently being used by such agency shall be eligible for reassignment by the administrator.

**Source:** Laws 1980, LB 885, § 6; Laws 2004, LB 439, § 30.

**81-1108.54 State building division; purpose.**

The purpose of the state building division is to provide centralized procurement, operation, maintenance, and management of office space and independent review, analysis, and oversight of capital construction projects to insure that the most appropriate facilities are provided for the efficient functioning of state government. It is the intent of the Legislature that the responsibility for state facilities be centralized within the division except for buildings and grounds exempted under subsection (5) of section 81-1108.15.

**Source:** Laws 1981, LB 381, § 37; Laws 1995, LB 530, § 16.

**81-1108.55 Competitive bids; award to lowest responsible bidder; elements considered; procurement reports.**

All purchases, leases, or contracts which by law are required to be based on competitive bids pursuant to section 81-1108.16 shall be made to the lowest responsible bidder, taking into consideration the best interests of the state, the quality or performance of the property proposed to be supplied, its conformity with specifications, the purposes for which required, and the times of delivery.

In determining the lowest responsible bidder, in addition to price, the following elements shall be given consideration:

- (1) The ability, capacity, and skill of the bidder to perform the contract required;
- (2) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (3) Whether the bidder can perform the contract within the time specified;
- (4) The quality of performance of previous contracts;
- (5) The previous and existing compliance by the bidder with laws relating to the contract;
- (6) The life-cost of the property in relation to the purchase price and specific use of the item;
- (7) The performance of the property, taking into consideration any commonly accepted tests and standards of product usability and user requirements;
- (8) Energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment;
- (9) The information furnished by each bidder, when deemed applicable by the State Building Administrator, concerning life-cycle costs between alternatives for all classes of equipment, evidence of expected life, repair and maintenance costs, and energy consumption on a per-year basis; and
- (10) Such other information as may be secured having a bearing on the decision to award the contract.

Reports regarding procurements made pursuant to this section shall be provided to the State Energy Office. Such reports shall be in the form and contain such information as the State Energy Office may require.

All political subdivisions may follow the procurement principles set forth in this section if they are deemed applicable by the official authorized to make purchases for such political subdivision.

**Source:** Laws 1992, LB 1241, § 25.

**81-1108.56 State building division or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty.**

Neither the state building division nor any employee under its direction shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase or leasing of any real property nor in any firm, partnership, limited liability company, corporation, or association furnishing real property. No such person shall receive or accept directly or indirectly from any person, firm, limited liability company, or corporation submitting any bid or to whom a contract may be awarded, by rebate, gift, or otherwise, any money or other thing of value whatsoever, or any promise, obligation, or contract for future reward, or compensation. Any person who violates the provisions of this section shall be guilty of a Class IV felony and shall be subject to forfeiture of his or her office or position.

**Source:** Laws 1992, LB 1241, § 26; Laws 1993, LB 121, § 537.

**81-1108.57 Centralization and coordination of real property; legislative intent.**

It is the intent of the Legislature to centralize and coordinate the real property resources owned and leased by the state. Currently many state buildings are left vacant by agencies as new leases are signed and agencies' missions change. Without centralized authority and expertise to allocate, maintain, and renovate current buildings, the state will continue to lease more space from outside sources, thus increasing state expenditures. To facilitate the goal of centralized authority, the changes proposed by Laws 1992, LB 1241, are required.

**Source:** Laws 1992, LB 1241, § 1.

**81-1109 Director of Administrative Services; technical assistance to Governor; reports to Governor.**

The Director of Administrative Services shall be responsible to the Governor for provision of technical assistance, advice, and information concerning the financial and administrative operations of all agencies of the state, for provision of technical assistance and advice on the preparation of the Governor's budget, otherwise referred to in sections 11-119, 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 as the executive budget, and for administration of the approved budget within the limits of appropriations provided except as otherwise provided by law. He or she shall be responsible to the Governor for the provision of current reports of the financial condition of the state and each of its departments and agencies and for the provision of timely recommendations for dealing with financial, management, and organizational problems affecting the administration of the business of the state and its departments and agencies.

**Source:** Laws 1965, c. 538, § 9, p. 1696; Laws 1995, LB 15, § 3.

**81-1110 Department of Administrative Services; accounting division; Accounting Administrator; qualifications; compensation.**

The Director of Administrative Services may appoint as accounting division head any person who shall have successfully completed a four-year course with a major field of concentration in accounting at an accredited college or university and who shall have had not less than three years responsible experience either as an auditor or in an executive capacity involving responsibility for directing the work of others engaged in governmental accounting or auditing or both, and in addition shall be a certified public accountant.

The compensation of the accounting division head, who shall be designated as the Accounting Administrator, shall be fixed by the Director of Administrative Services subject to availability of appropriations.

**Source:** Laws 1965, c. 538, § 10, p. 1696; Laws 1969, c. 804, § 4, p. 3033.

**81-1110.01 Accounting division; purpose.**

The purpose of the accounting division is to prescribe, coordinate, and administer a centralized, uniform state accounting and payroll system and personnel information system, to establish and enforce accounting policies and procedures for all state agencies, boards, and commissions, to monitor and enforce state expenditure limitations established by approved state appropria-

tions and budget allotments, and to administer the federal Social Security Act for the state and the state's political subdivisions.

**Source:** Laws 1981, LB 381, § 36.

**81-1110.02 Repealed. Laws 2003, LB 11, § 1.**

**81-1110.03 Accounting Administrator; prepare schedule of fees.**

The Accounting Administrator at the direction of the Director of Administrative Services shall prepare a schedule of fees to assess agencies for accounting services performed by the accounting division of the Department of Administrative Services. The fees shall be adequate to cover actual and necessary expenses associated with providing the services.

**Source:** Laws 1995, LB 325, § 1.

**81-1110.04 Accounting Division Revolving Fund; created; use; investment.**

The Accounting Division Revolving Fund is created. The fund shall consist of (1) accounting assessments received from state agencies, boards, and commissions, (2) interest earnings credited and transferred to the fund, (3) payments received for services rendered by the accounting division, and (4) rebate revenue transferred to the fund from certain state purchasing card programs. The fund shall be used for payment of administrative expenses of the accounting division of the Department of Administrative Services. The fund shall be administered by the Accounting Administrator. 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 325, § 2; Laws 2000, LB 1216, § 27.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1110.05 Accounting division assessment payments; procedure.**

The state agencies, boards, and commissions shall make the accounting division assessment payments to the Accounting Division Revolving Fund pursuant to sections 81-1110.03 and 81-1110.04 to the Department of Administrative Services no later than August 1 of each year, or in four equal payments to be made no later than August 1, October 1, February 1, and April 1 of each year, at the discretion of the Accounting Administrator of the Department of Administrative Services.

**Source:** Laws 1995, LB 325, § 3.

**81-1110.06 State Purchasing Card Distributive Fund; created; use; investment.**

The State Purchasing Card Distributive Fund is created. All rebates received by the state from any purchasing card programs entered into by the State of Nebraska, except for rebates received from separate purchasing card programs entered into solely by the University of Nebraska, shall be credited to the fund. The fund may consist of purchasing card and travel card payments and deposits received from state agencies, boards, commissions, and political subdivisions, plus any rebate revenue received on behalf of the program by the accounting

division of the Department of Administrative Services. The fund may be used for the purpose of coordinating and expediting payments to vendors related to any purchasing card programs administered by the accounting division and the required distribution of any rebate revenue, after covering expenses. The fund shall be administered by the Accounting Administrator. The accounting division shall deduct from the total program rebates of any state-sponsored purchasing card program an amount necessary to cover the full cost of operating the purchasing card program. After deducting the full cost of operating the purchasing card program from the total program rebates, with the exception of existing purchasing card programs, the remaining rebate funds shall be distributed on an annual basis by the Accounting Administrator based on a combination of volume performance and speed of pay performance among the following entities: (1) The University of Nebraska; (2) the accounting division, on behalf of the remainder of state government; and (3) any political subdivisions participating in any state-sponsored purchasing card program. The Accounting Administrator is authorized to distribute through the fund or through a vendor contractual agreement the remaining program rebates, after covering expenses. On a monthly basis the accounting division shall administratively transfer all interest earnings credited to the fund to the Accounting Division Revolving Fund within ten days after the end of each month. On an annual basis the accounting division shall administratively transfer from the fund to the Accounting Division Revolving Fund all rebate revenue to which the accounting division is entitled plus an amount necessary to cover the full cost of operating the purchasing card program. All costs of operating the purchasing card program shall be paid through the Accounting Division Revolving 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 2000, LB 1216, § 2.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **81-1111 Department of Administrative Services; Accounting Administrator; powers; duties; bureaus; created.**

(1) Subject to the supervision of the Director of Administrative Services, the Accounting Administrator shall have the authority to prescribe the system of accounts and accounting to be maintained by the state and its departments and agencies, develop necessary accounting policies and procedures, coordinate and approve all proposed financial systems, and manage all accounting matters of the state's central system. There shall be created three separate bureaus to be supervised by the Accounting Administrator: The accounting bureau, the management systems and studies bureau, and the social security administration bureau.

(2) The accounting bureau shall monitor all departments and agencies authorized by the Director of Administrative Services to perform their own preaudits.

(3) For all departments and agencies not authorized by the director to perform their own preaudit, the accounting bureau:

(a) Shall be responsible for the preaudit and control of all vouchers and payrolls equal to or exceeding one thousand five hundred dollars in order to assure the legality of all transactions, to insure that all vouchers for payment are within the approved budget, and to insure that adequate cash is available for payment;

(b) Shall preaudit all audit-sensitive areas, including, but not limited to:

(i) Employee-related expenses such as expense vouchers, direct-bill lodging and airfare, moving expenses, tuition assistance, and employee recognition programs;

(ii) Expenses pertaining to conferences, including items such as food, lodging, and honorariums; and

(iii) Encumbrance liquidations between bienniums;

(c) May, with the approval of the Accounting Administrator, preaudit and control vouchers and payrolls less than one thousand five hundred dollars and may require additional documentation as necessary in order to reasonably assure the legality of all such transactions, to insure that all such vouchers for payment are within the approved budget, and to insure that adequate cash is available for payment;

(d) Shall require supporting documentation of transactions that are preaudited to be provided with the voucher to the accounting bureau by the department, agency, division, or office whose transaction is being preaudited. Such supporting documentation shall include, but not be limited to, the original invoice, payment request, or other documentation as established by the Accounting Administrator;

(e) May, with the approval of the Accounting Administrator, provide for alternative preaudit and documentation requirements for refunds and state aid payments;

(f) Shall call to the attention of the director all vouchers or payments which seem to be in violation of the laws of the state and to the attention of the director and the budget administrator all vouchers for payments which are inconsistent with the approved budget; and

(g) Shall undertake the writing of all warrants for the department and shall implement in all departments and agencies of state government an effective double entry system of financial and budgetary control accounting for all revenue and expenditures of all departments and agencies of the state, which system shall develop costs by programs, subprograms, activities, or objects of expenditures and shall allow for comparison between budgeted and actual expenditure.

(4) The management systems and studies bureau shall be responsible for systematically reviewing on a regular basis activities of state agencies and departments to determine that adequate internal controls exist within all departments and agencies and to assure that proper accounting methods are employed. The bureau shall receive copies of all audits performed by or for the Auditor of Public Accounts of the financial status and conditions in all state departments and agencies. The bureau shall be available to consult with all governmental departments and agencies in training their staff and developing efficient work flow within such departments and agencies and shall provide such departments and agencies with appropriate accounting reports, summaries, and analyses prepared by the accounting division as are necessary to

effectively administer these departments and agencies. The bureau shall establish a system for receiving and disbursing funds associated with any financing agreement.

(5) The social security administration bureau shall be responsible for the administration of social security responsibilities of the state. Its duties, powers, and responsibilities and its staff, equipment, and records shall be subject to the supervision of the Accounting Administrator. The Accounting Administrator shall also be the state social security administrator.

**Source:** Laws 1965, c. 538, § 11, p. 1697; Laws 1967, c. 593, § 3, p. 2017; Laws 1969, c. 804, § 5, p. 3033; Laws 1979, LB 576, § 6; Laws 1981, LB 381, § 23; Laws 1993, LB 544, § 3; Laws 1995, LB 199, § 1; Laws 1999, LB 432, § 2.

#### **81-1111.01 Director of Administrative Services; preaudits authorized.**

For agencies with fewer than seven full-time employees, preaudits shall be conducted by the accounting bureau or by a state agency authorized by the Director of Administrative Services to conduct its own preaudits. The Director of Administrative Services may authorize departments and agencies that have seven or more full-time employees to perform their own preaudits, subject to monitoring by the accounting bureau. The preaudits shall be performed in accordance with the provisions of subdivisions (3)(a) through (f) of section 81-1111.

**Source:** Laws 1999, LB 432, § 1; Laws 2014, LB974, § 8.  
Effective date April 3, 2014.

#### **81-1111.02 Repealed. Laws 1988, LB 1079, § 9.**

#### **81-1111.03 Repealed. Laws 1988, LB 1079, § 9.**

#### **81-1111.04 Department of Administrative Services; Accounting Administrator; administratively establish funds.**

(1) The Accounting Administrator may administratively establish cash and revolving funds to (a) account for gifts, bequests, or devises when no cash fund exists and (b) account for specific, one-time, nonfederal sources of revenue.

(2) All cash or revolving funds administratively created by the Accounting Administrator shall exist for a maximum of two fiscal years after the date of establishment. Prior to the end of two fiscal years, the expending agency shall notify the Accounting Administrator of its intentions to (a) lapse the balance of the administrative cash or revolving fund to the General Fund or (b) permanently establish the fund in statute.

(3) In addition, the Accounting Administrator may administratively establish federal funds, trust funds, and distributive funds as necessary.

**Source:** Laws 1994, LB 1194, § 7.

#### **81-1112 Department of Administrative Services; budget administrator; qualifications; compensation.**

The budget division shall be headed by an administrator subject to the supervision of the Director of Administrative Services. The director may appoint as budget administrator any person who has successfully completed a four-year program in an accredited college or university and who has not less

than three years experience involving responsibility for the management or control or review of finances or of management, or both. Eight years of responsible experience in the management, review, or control of finances of governmental agencies or of private enterprises may be substituted for the educational and experience requirements set forth in this section. The compensation of the budget administrator shall be fixed by the director subject to the availability of appropriations. The budget and planning administrator shall have the duties, powers and responsibility to staff and maintain and shall oversee such bureau.

**Source:** Laws 1965, c. 538, § 12, p. 1698; Laws 1967, c. 593, § 4, p. 2018; Laws 1969, c. 804, § 6, p. 3035.

#### **81-1112.01 Budget division; purpose.**

The purpose of the budget division is to assist the Governor in the preparation of the Governor's state budget recommendations and in the administration of the approved state budget.

**Source:** Laws 1981, LB 381, § 38.

#### **81-1113 Budget division; powers; duties.**

The budget division shall prepare the executive budget in accordance with the wishes and policies of the Governor. The budget division shall have the following duties, powers, and responsibilities:

(1) Shall prescribe the forms and procedures to be employed by all departments and agencies of the state in compiling and submitting their individual budget requests and shall set up a budget calendar which shall provide for (a) the date, not later than July 15 of each even-numbered year, for distribution of instructions, (b) the date by which time requests for appropriations by each agency shall be submitted, and (c) the period during which such public hearings as the Governor may elect shall be held for each department and agency. The budget request shall be submitted each even-numbered year no later than the date provided in section 81-132, shall include the intended receipts and expenditures by programs, subprograms, and activities and such additional information as the administrator may deem appropriate for each fiscal year, shall be made upon a biennial basis, and shall include actual receipts and actual expenditures for each fiscal year of the most recently completed biennium and the first year of the current biennium and estimates for the second year of the current biennium and each year of the next ensuing biennium;

(2) Shall work with each governmental department and agency in developing performance standards for each program, subprogram, and activity to measure and evaluate present as well as projected levels of expenditures. The budget division shall also work with the Department of Health and Human Services to develop key goals, benchmarks, and methods of quantification of progress required pursuant to sections 81-3133 to 81-3133.03;

(3) Shall, following passage of legislative appropriations, be responsible for the administration of the approved budget through budgetary allotments;

(4) Shall be responsible for a monthly budgetary report for each department and agency showing comparisons between actual expenditures and allotments,

which report shall be subject to review by the director and budget administrator; and

(5) Shall be responsible for the authorization of employee positions. Such authorizations shall be based on the following:

(a) A requirement that a sufficient budget program appropriation and salary limitation exist to fully fund all authorized positions;

(b) A requirement that permanent full-time positions which have been vacant for ninety days or more be reviewed and reauthorized prior to being filled. If requested by the budget division, the personnel division of the Department of Administrative Services shall review such vacant position to determine the proper classification for the position;

(c) A requirement that authorized positions accurately reflect legislative intent contained in legislative appropriation and intent bills; and

(d) Other relevant criteria as determined by the budget administrator.

**Source:** Laws 1965, c. 538, § 13, p. 1698; Laws 1967, c. 594, § 1, p. 2023; Laws 1969, c. 804, § 7, p. 3035; Laws 1981, LB 381, § 24; Laws 1986, LB 258, § 37; Laws 1992, Third Spec. Sess., LB 14, § 9; Laws 1997, LB 269, § 65; Laws 2002, Second Spec. Sess., LB 12, § 3; Laws 2003, LB 8, § 2; Laws 2012, LB949, § 3; Laws 2014, LB974, § 9.

Effective date April 3, 2014.

**81-1113.01 State budgets; department and agency budget requests; budget forms and instructions; when distributed; additional forms.**

The forms and procedures required pursuant to section 81-1113 shall only be prepared and distributed after:

(1) The final draft of the proposed budget forms and budget instructions have been provided to the Legislative Fiscal Analyst and an opportunity provided for recommendations from that office;

(2) The State Budget Administrator and Legislative Fiscal Analyst have met and discussed the recommended changes; and

(3) A revised final draft of all proposed forms and instructions has been provided to the Legislative Fiscal Analyst.

If the State Budget Administrator is unable to accommodate any recommended changes, the Legislative Fiscal Analyst shall be allowed to submit additional forms for the collection of information. Such forms shall be included as an attachment to the forms required by the Department of Administrative Services. All such forms shall be completed and submitted as a part of the budget submission process.

**Source:** Laws 1978, LB 526, § 4.

**81-1113.02 Repealed. Laws 1996, LB 966, § 4.**

**81-1114 Department of Administrative Services; building division; powers, duties, and responsibilities.**

The building division shall have the following powers, duties, and responsibilities:

(1) Shall prepare, for submittal to the Governor and to the office of the Legislative Fiscal Analyst, analyses of the cost of every desired land and building acquisition, new building construction, either underway or proposed, major repair or remodeling of new, newly acquired, or existing buildings, and each and every structural improvement to land, utilities, roads, walks, and parking lots, costing four hundred thousand dollars or more, but excluding right-of-way projects of the Department of Roads. The analyses submitted to the Legislative Fiscal Analyst shall be submitted electronically. The Department of Administrative Services shall adjust the dollar amount in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustment 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;

(2) Shall record the relationship between the proposed capital facilities and the individual or departmental agencies' operating programs with particular attention to needs of immediate or future operations of the department or agency submitting such plan;

(3) Shall make recommendations to the Governor, the committee of the Legislature which shall from time to time have responsibility for preparing recommendations for appropriations, and the individual department or agency concerned, on the probable costs of such acquisition, construction, repair, or remodeling. The recommendations submitted to the committee shall be submitted electronically; and

(4) Shall require the submission by each department and agency of the state of copies of all written contracts for acquisition, construction, repair, or remodeling, including federal contracts, before such contracts are executed by the executive officer of the state authorized to execute such contracts, and shall maintain copies of such contracts on file for inspection by the Legislative Fiscal Analyst.

**Source:** Laws 1965, c. 538, § 14, p. 1699; Laws 1967, c. 594, § 2, p. 2024; Laws 1969, c. 804, § 8, p. 3036; Laws 1981, LB 381, § 25; Laws 1998, LB 1129, § 22; Laws 2003, LB 410, § 10; Laws 2012, LB782, § 185.

**81-1114.01 Capital construction project; plan required; contents; revisions required; when; to whom submitted.**

Each department and agency of the state prior to submitting a capital construction project request in excess of four hundred thousand dollars shall cause to be prepared a comprehensive capital facilities plan. Such plan shall include, but not be limited to, a projection of future programmatic needs, analysis of existing facilities and the utilization of such facilities, and identification of projects to meet those projected programmatic needs, including addition to, or renovation or replacement of, existing space, parking, streets, and utilities. The comprehensive capital facilities plan shall be updated or revised when a major capital construction project requested for funding is not in compliance with such plan or when revisions in projected programmatic needs would significantly affect the comprehensive capital facilities plan. Such plans and any updates or revisions shall be submitted to the state building division and the Legislative Fiscal Analyst. The plans and any updates or revisions submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Such plans and revisions or updates shall be prepared in accordance with rules and regulations adopted and promulgated by the state building division. The Department of Administrative Services shall adjust the dollar amount in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustment 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 1981, LB 381, § 26; Laws 1998, LB 1129, § 23; Laws 2012, LB782, § 186.

**81-1114.02 Capital construction project; state building division; review and comment.**

Any state agency, prior to bidding a capital construction project with a total project cost exceeding the limit established by the Department of Administrative Services in accordance with section 81-1114.01, shall submit proposed construction documents to the state building division for review. The state building division shall review the construction documents and submit comments to the budget division, the Legislative Fiscal Analyst, and the affected agencies. The comments submitted to the Legislative Fiscal Analyst shall be submitted electronically. Comments shall include identification of possible cost and design alternatives and a determination whether the construction documents are consistent with approved program statements. The state building division shall, by rules and regulations, establish the elements to be included in the construction documents. Comments and reviews of construction documents shall be completed within thirty days after such documents are submitted to the state building division. No funds shall be expended on actual construction until construction documents have been approved by the state building division. A copy of the approval or disapproval shall be forwarded to the requesting agency, the budget division, and the Legislative Fiscal Analyst. The copy submitted to the Legislative Fiscal Analyst shall be submitted electronically.

**Source:** Laws 1981, LB 381, § 27; Laws 2000, LB 654, § 25; Laws 2004, LB 819, § 1; Laws 2012, LB782, § 187.

**81-1115 Department of Administrative Services; budget division; budgetary planning; duties; responsibilities.**

The budget division shall undertake such tasks of budgetary planning as are presently done by various departments and agencies of state government under the current biennial system of appropriations, and shall have the following duties and responsibilities:

- (1) Coordinate the fiscal plans of all state agencies;
- (2) Develop a long-range framework for program budgeting based on forecasts of revenue and expenditures and review all such forecasts of revenue and expenditures quarterly;
- (3) Compile and publish annually a summary of the operations and trends under all federal programs in which state agencies have participated or might participate and report on the size and desirability of federal grants and the effectiveness of changes and tax laws on the ability of the state to attract industry; and

(4) Make periodic studies of the policies of other states regarding the levels of services being provided by state agencies in this state in comparison with that of other states.

**Source:** Laws 1965, c. 538, § 15, p. 1701; Laws 1969, c. 804, § 9, p. 3038.

**81-1116 Information management services division; administrator; qualifications; pay.**

The information management services division shall be headed by an administrator. Any person who has successfully completed a four-year program at an accredited four-year college or university and who has not less than four years total experience in information management services, of which not less than one year shall have been experience as the supervisor of an information management entity in government or private enterprise and not less than two years shall have been experience as a systems analyst or with principal responsibility for systems development or supervision, or both, may be appointed information management services administrator by the Chief Information Officer. Successful completion of training courses covering the functions, programming, operations, and systems development aspects of information management equipment may be accounted as experience in direct proportion to the number of weeks of course work completed. The rate of pay for the information management services administrator shall be fixed by the Chief Information Officer subject to availability of appropriations. The information management services administrator shall have the power to select and manage such staff and supervise the operation of such equipment as he or she may require.

**Source:** Laws 1965, c. 518, § 16, p. 1701; Laws 1967, c. 595, § 4, p. 2028; Laws 1967, c. 593, § 5, p. 2019; Laws 1969, c. 804, § 10, p. 3038; Laws 1998, LB 924, § 35; Laws 2006, LB 921, § 3.

**81-1116.01 Budget allowance; expend; restriction.**

No department, commission, board or agency of state government may spend any money beyond its budget allowance without specific authority from the Legislature.

**Source:** Laws 1967, c. 367, § 3, p. 959.

**81-1116.02 Information management services division; purpose.**

The purpose of the information management services division is to provide centralized, coordinated, and efficient information management services to all state agencies and to prevent unnecessary duplication of information management operations and applications in state government.

**Source:** Laws 1981, LB 381, § 35; Laws 1998, LB 924, § 36.

**81-1117 Information management services administrator; powers, duties, and responsibilities; enumerated; restrictions on agency acquisitions; Information Management Revolving Fund; created; investment.**

(1) As used in this section, unless the context otherwise requires, information management includes, but is not limited to:

(a) Mainframe computers, minicomputers, microprocessors, word processors, and desktop computers;

(b) Any peripheral device to be used with the equipment listed in subdivision (1)(a) of this section for such purposes as data input and output, data storage, or data communications;

(c) Any code or program to control the operation of the equipment or devices listed in subdivision (1)(a) or (1)(b) of this section; and

(d) Employment of professional expertise for computer system design, operations, or program development.

(2) Subject to review and approval by the Chief Information Officer, the information management services administrator shall have the following powers, duties, and responsibilities:

(a) He or she may review the accounting and other records and reporting systems of all divisions within the Department of Administrative Services and within every other department and agency of the state;

(b) He or she shall systematically review the potential application of information management to any work performed outside the information management services division or by any department or agency of the state or any subdivision of any department or agency of the state, and if the costs of mechanizing such work will not exceed present costs or if efficiencies may be achieved, he or she may accept responsibility for the performance of such work. He or she may also review computer applications being used to determine if revision or deletion of computer applications would be beneficial. The findings of reviews made pursuant to this subdivision shall be reported to the Governor and the Legislative Fiscal Analyst. The findings submitted to the Legislative Fiscal Analyst shall be submitted electronically;

(c) He or she may, with the approval of the Chief Information Officer, make such revisions to internal systems for production of accounting and other reports as may be necessary to permit economical undertaking of work to be performed by the information management services division for any agency or department of the state;

(d) He or she shall organize the information management services division to provide system review, system design, feasibility studies, and machine reviews;

(e) He or she may review the operations of information management installations as may exist in any department or agency of the state and may cause such operations to be merged with those of the information management services division in the event that a cost analysis shows that economic advantage may be achieved. He or she may permit the establishment of departmental or agency information management operations in any department or agency of the state if his or her analysis of feasibility shows a potential economy or a substantial convenience for the state incident to such separate establishment. No state agency shall hire, purchase, lease, or rent any information management item listed in subsection (1) of this section without the written approval of the information management services administrator. All new computer programs developed or acquired for use with information management equipment of any state agency shall be documented according to standards developed or approved by the information management services administrator;

(f) He or she shall prepare a budget in sufficient time in advance of the statutory date for submittal of budget requests by departments and agencies of the state as to permit each department and agency for which services are performed, or are to be performed during the request budget period, to be

informed of the cost of maintaining the current fiscal year's production work for inclusion within their respective budget requests;

(g) He or she shall provide for a system of charges for services rendered by the information management services division to any other department or agency of the state when these charges are allocable to a particular project carried on by such department or division. Such standard rate charges shall, as nearly as may be practical, reflect the actual costs incurred in the performance of services for such department or agency. Such system of charges shall be annually reviewed by the Legislature's Committee on Appropriations. Rates planned for the coming fiscal year shall be included in the instructions for completion of budget request forms as annually prepared by the Department of Administrative Services budget division. If rate revisions are required during the fiscal year to reflect changes in the information management services division's operating costs, these revisions shall be announced to state agencies at least thirty days prior to their use in billing these agencies for service. Miscellaneous supplies shall be billed to using agencies at actual cost. Equipment used primarily by one agency for special applications shall be billed to that agency at actual cost. In the event of saturation of the information management services division with the resulting need for contractual support to be furnished by another information management installation, agencies shall be billed at actual cost. The charges received by the department for information management services shall be credited to a fund hereby created which shall be known as the Information Management Revolving Fund. Expenditures shall be made from such fund to finance the operations of the information management services division in accordance with appropriations made by the Legislature. Any money in the Information Management 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;

(h) He or she may provide information management services and technical assistance to any subdivision of government as provided for under the Interlocal Cooperation Act or the Joint Public Agency Act;

(i) He or she shall provide for the centralization of all administrative work, including that of educational institutions, into the information management services division;

(j) He or she shall provide definitions of standards and common data elements, coordinate the collection of data, consolidate data files or data banks, and review and approve or disapprove the establishment of separate data banks; and

(k) He or she shall provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section 86-521.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (2)(b) of this section by making a request for it to the administrator.

**Source:** Laws 1965, c. 538, § 17, p. 1703; Laws 1969, c. 804, § 11, p. 3039; Laws 1969, c. 584, § 108, p. 2413; Laws 1975, LB 472, § 1; Laws 1979, LB 560, § 1; Laws 1981, LB 381, § 28; Laws 1995, LB 7, § 118; Laws 1998, LB 924, § 37; Laws 1999, LB 87, § 95; Laws 2002, LB 1105, § 506; Laws 2006, LB 921, § 4; Laws 2012, LB782, § 188.

## Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

This section held not applicable to the Board of Regents other officers or agencies. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).  
which cannot delegate its constitutional powers and duties to

**81-1117.01 Imprest Payroll Distributive Fund; created; use.**

The Imprest Payroll Distributive Fund is created. The fund shall be used for the purpose of coordinating and expediting the payment of the salary and wages of the officers and employees of the various departments and agencies of the state. The fund shall be administered by the Accounting Administrator.

Each officer, agency, board, or commission of the state shall prepare its payroll in accordance with policies, procedures, and schedules established by the director.

The director may debit the appropriate programs and funds of each of the agencies, boards, and commissions of the state for the total amount of the payroll based upon the input provided by the agencies and credit the Imprest Payroll Distributive Fund with an identical amount. The director shall make payments from the Imprest Payroll Distributive Fund by warrant or by electronic funds transfer for the net amount of salaries or wages due each individual and to payroll-deduction vendors according to schedules established by the director. The director may make payments from the Imprest Payroll Distributive Fund to the federal government if required by federal regulations for the federal share of retirement accounts for terminating employees pursuant to section 84-1321. Payroll records provided by the director shall disclose all expenditures and payroll deductions attributable to each payroll.

**Source:** Laws 1972, LB 1467, § 1; Laws 1984, LB 933, § 16; Laws 1986, LB 930, § 3; Laws 1989, LB 255, § 1; Laws 1995, LB 311, § 1; Laws 2000, LB 1216, § 28.

**81-1117.02 Computer file data; release prohibited; written approval for release excepted; public records excepted.**

(1) Neither the information management services administrator, the Chief Information Officer, nor any employee of such administrator or officer shall release or permit the release of any data maintained in computer files to any person or persons without the express written approval of both the agency primarily responsible for collection and maintenance of such data and the employee to whom such data pertains, except as provided in subsection (2) of this section.

(2) Any data which is a public record in its original form shall remain a public record when maintained in computer files and shall be provided to the Legislative Fiscal Analyst pursuant to section 50-420 and shall be made available to the Auditor of Public Accounts solely for use in the performance of audits prescribed by law.

**Source:** Laws 1975, LB 472, § 2; Laws 1979, LB 414, § 4; Laws 1979, LB 193, § 1; Laws 1998, LB 924, § 38; Laws 2006, LB 921, § 5.

**81-1117.03 Computer file data; release; violations; penalties.**

Any public official or employee who shall violate the provisions of section 81-1117.02 shall be guilty of a Class II misdemeanor and shall be subject to removal from office or discharge in the discretion of the Governor or agency head as appropriate.

**Source:** Laws 1975, LB 472, § 3; Laws 1977, LB 39, § 304.

**81-1117.04 Computer file data; public records defined.**

Except as otherwise provided by law, public records shall mean all papers, correspondence, memoranda, accounts, reports, maps, plans, photographs, sound recordings, or other documents, regardless of physical form, including records produced by or for use with electronic or mechanical data processing devices, and which have been or shall be created or received by any agency or its lawful successor or official thereof in the exercise of his office or in the conduct, transaction, or performance of any business, duty, or function pursued in accordance with law, but shall not include library or museum material made or acquired and preserved solely for reference purposes, extra copies of documents preserved only for convenience or reference, and stock of publications and reproduced documents.

**Source:** Laws 1975, LB 472, § 4.

**81-1117.05 State employee; payment of wages; methods authorized.**

The Department of Administrative Services may make payments that include, but are not limited to, wages and reimbursable expenses to state employees by electronic funds transfer or a similar means of direct deposit. For purposes of this section, state employee means any person or officer employed by the state who works a full-time or part-time schedule on an ongoing basis.

**Source:** Laws 2001, LB 308, § 1; Laws 2009, LB167, § 2.

**81-1118 Materiel division; established; duties; administrator; branches; established.**

The materiel division of the Department of Administrative Services is hereby established and shall be managed by the materiel administrator.

There are hereby established the following seven branches of the materiel division of the Department of Administrative Services which shall have the following duties, powers, and responsibilities:

(1) The office supplies bureau shall be responsible for providing office supplies, paper, and forms to using agencies;

(2) Central mail shall be responsible for all mailing operations, transportation of material, tracking shipments, and making freight claims;

(3) The print shop shall be responsible for specifications and for receiving bids and placing orders to the lowest and best commercial bidder for all printing and reproduction operations for the state. The print shop shall also be responsible for coordinating all existing printing and reproduction operations of the state;

(4) Copy services shall be responsible for the purchasing and placement of all copier requirements;

(5) The state purchasing bureau shall be responsible for all purchases by all state agencies other than the University of Nebraska. The materiel division shall

administer the public notice and bidding procedures and any other areas designated by the Director of Administrative Services to carry out the lease or purchase of personal property. All purchases of and contracts for materials, supplies, or equipment and all leases of personal property shall be made in the following manner except in emergencies approved by the Governor:

(a) By a competitive formal sealed bidding process through the materiel division in all cases in which the purchases are of estimated value in the amount of twenty-five thousand dollars or more;

(b) By a competitive informal bidding through the materiel division in all cases in which the purchases are of estimated value equal to or exceeding ten thousand dollars but less than twenty-five thousand dollars;

(c) By unrestricted open market purchases through the materiel division in all cases in which purchases are of estimated value of less than ten thousand dollars;

(d) All requisitions for whatever purpose coming to the state purchasing bureau shall be in conformance with the approved budget of the requisitioning department or agency; and

(e) All contracts for purchases and leases shall be bid as a single whole item. In no case shall contracts be divided or fractionated in order to produce several contracts which are of an estimated value below that required for competitive bidding;

(6) The state recycling office shall be responsible for the administration and operation of the State Government Recycling Management Act; and

(7) State surplus property shall be responsible for the disposition of the state's surplus property and the maintenance of all inventory records.

Nothing in this section shall be construed to require that works of art must be procured through the materiel division.

**Source:** Laws 1965, c. 538, § 18, p. 1705; Laws 1969, c. 780, § 4, p. 2955; Laws 1974, LB 1054, § 32; Laws 1975, LB 359, § 14; Laws 1975, LB 447, § 8; Laws 1981, LB 381, § 29; Laws 1992, LB 1241, § 27; Laws 1997, LB 314, § 11; Laws 1998, LB 1129, § 24; Laws 2000, LB 654, § 26; Laws 2003, LB 626, § 10.

#### Cross References

State Government Recycling Management Act, see section 81-1183.

### **81-1118.01 Materiel administrator; inventory record; state property; powers and duties.**

The materiel administrator shall have complete control of all furniture and equipment in the capitol, state laboratory, Governor's Mansion, and all other buildings owned or leased by the State of Nebraska, except telephone and telecommunications equipment and equipment and furniture of the Legislature and the Supreme Court. The materiel administrator shall keep in his or her office a complete record containing an itemized account of all state property, including furniture and equipment under his or her care and control. Such inventory record shall be maintained as a management system to assure efficient utilization of state property with particular emphasis on identification of surpluses. Such system shall be designed so as to provide the materiel administrator with the knowledge of potential surplus property available. The materiel administrator under the authority of the Director of Administrative

Services shall have complete control and all powers necessary to assure efficient utilization of state property.

**Source:** Laws 1974, LB 1048, § 38; Laws 2000, LB 654, § 27.

**81-1118.02 All officers, departments, and agencies; state property; inventory; how stamped; action to recover.**

(1) Each executive, department, commission, or other state agency, including the Supreme Court, the Board of Regents of the University of Nebraska, and the Board of Trustees of the Nebraska State Colleges, shall annually make or cause to be made an inventory of all property, including furniture and equipment, belonging to the State of Nebraska and in the possession, custody, or control of any executive, department, commission, or other state agency. The inventory shall include property in the possession, custody, or control of each executive, department, commission, or other state agency as of June 30 and shall be completed and filed with the materiel administrator by August 31 of each year.

(2) If any of the property of the state, referred to in subsection (1) of this section, is lost, destroyed, or unaccounted for by the negligence or carelessness of the executive, department, commission, or other state agency, the administrator shall, with the advice of the Attorney General, take the proper steps to recover such state property or the reasonable value thereof from the executive, department, commission, or other state agency charged with the same and from the person bonding such executive, department, commission, or other state agency, if any.

(3) Each such executive, department, commission, or other state agency shall indelibly tag, mark, or stamp all such property belonging to the State of Nebraska, with the following: Property of the State of Nebraska. In the inventory required by subsection (1) of this section, each such executive, department, commission, or other state agency shall state positively that each item of such property has been so tagged, marked, or stamped.

**Source:** Laws 1937, c. 161, § 1, p. 625; Laws 1939, c. 94, § 1, p. 407; Laws 1941, c. 144, § 1, p. 573; C.S.Supp.,1941, § 72-707; R.S. 1943, § 72-707; Laws 1955, c. 278, § 3, p. 881; Laws 1957, c. 306, § 1, p. 1112; Laws 1959, c. 331, § 2, p. 1205; Laws 1963, c. 418, § 3, p. 1343; R.R.S.1943, § 72-707; Laws 1974, LB 1048, § 39; Laws 1981, LB 545, § 32; Laws 1984, LB 933, § 17; Laws 1989, LB 256, § 1; Laws 2011, LB59, § 3.

**81-1118.03 Personal property; purchase or lease; approval; solicitation by Department of Administrative Services; duties.**

Notwithstanding any other provision of law, all contracts for or leases of personal property shall be subject to the following conditions:

(1) No purchase or lease of property shall be approved until a solicitation for purchase or lease has been made by the Department of Administrative Services. Such solicitation shall be in the form of a public notice of the proposed purchase or lease and a general description of the personal property needed in a paper of general circulation in the area where the agency will be operating or by any other method approved by the materiel administrator;

(2) The Department of Administrative Services shall be the sole and final authority on purchases and leases of personal property by a using agency. In

any case when the approval of the Governor is required, the Governor may, in his or her discretion, confer complete authority upon the Department of Administrative Services in the review and approval of purchase and lease proposals;

(3) The Department of Administrative Services shall adopt and promulgate rules and regulations to (a) develop and implement purchasing and leasing policies and procedures which shall insure economical and efficient operations of state agencies and (b) carry out the provisions of sections 81-145 to 81-162; and

(4) The Director of Administrative Services shall refuse to issue warrants for the disbursement of any funds in payment of contracts or leases which have not been approved according to law.

**Source:** Laws 1975, LB 359, § 15; Laws 1992, LB 1241, § 28; Laws 2000, LB 654, § 28.

#### **81-1118.04 Materiel division; purposes.**

The purposes of the materiel division are to maximize the state's purchasing power through an efficient and standardized state procurement system and centralized office services and supply program and to maximize the utilization of and control the inventory of state-owned equipment.

**Source:** Laws 1981, LB 381, § 40; Laws 2000, LB 654, § 29.

#### **81-1118.05 Materiel division; powers and duties.**

The materiel division of the Department of Administrative Services shall:

(1) Establish by rules and regulations a process for resolving complaints from both vendors and state agencies;

(2) Maintain a record and written justification of purchases as follows:

(a) A list of and explanation for emergency purchases;

(b) A list of open market purchases made by the division; and

(c) A list of all purchases waived from the minimum time period requirement between bid advertisement and bid opening; and

(3) Have the authority to enter into joint purchasing agreements with political subdivisions in the state.

**Source:** Laws 1981, LB 381, § 30.

#### **81-1118.06 Materiel division; state purchasing bureau; purposes.**

The purposes of the state purchasing bureau created by section 81-1118 are:

(1) To increase public confidence in the procedures followed in public procurement;

(2) To insure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(3) To provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of the public funds of the state;

(4) To foster effective broad-based competition within the free enterprise system; and

(5) To provide safeguards for the maintenance of a procurement system of quality and integrity.

**Source:** Laws 1981, LB 381, § 31; Laws 2000, LB 654, § 30.

**81-1118.07 State purchasing bureau; use reverse auction; powers and duties.**

(1) Notwithstanding any other provision of law, the state purchasing bureau created by section 81-1118 may use a reverse auction for the acquisition of goods if the bureau determines that the use of a reverse auction would be advantageous to the state.

(2) If the bureau conducts a reverse auction, the bureau shall provide notification of the intent to use the reverse auction process in the bid solicitation documents and, unless the solicitation is canceled, an award shall be made to the bidder determined by the bureau to be the lowest responsible bidder at the close of the bidding process. The bureau may require bidders to register before the opening date and time of the reverse auction.

(3) The bureau may contract with a third-party vendor to conduct a reverse auction pursuant to this section.

(4) The bureau may adopt and promulgate rules and regulations to implement this section.

(5) For purposes of this section, reverse auction means a process in which (a) bidders compete to provide goods in an open and interactive environment, which may include the use of electronic media, (b) bids are opened and made public immediately, and (c) bidders are given opportunity to submit revised bids until the bidding process is complete.

**Source:** Laws 2009, LB168, § 1.

**81-1119 Real property; purchases authorized.**

The Department of Administrative Services may purchase real property needed by the state which costs ten thousand dollars or less without legislative approval or a specific appropriation for such purchase unless the purchase is made to evade the dollar limitation in this section and additional unapproved purchases will be made which, when considered together, would exceed the dollar limitation.

**Source:** Laws 1992, LB 1241, § 29.

**81-1120 Materiel Division Revolving Fund; created; use; investment.**

(1) There is hereby created the Materiel Division Revolving Fund. The fund shall be administered by the materiel division of the Department of Administrative Services. The fund shall consist of (a) fees paid for printing, copying, central supply, and mailing services provided to state agencies and local subdivisions by the division and (b) assessments charged by the materiel administrator to state agencies, boards, and commissions for purchasing services provided by the division. Such assessments shall be adequate to cover actual and necessary expenses associated with providing the service. The fund shall be used to pay for expenses incurred by the division to provide such services.

(2) State agencies, boards, and commissions shall make the materiel division assessment payments to the fund no later than August 1 of each year, or in four

equal payments to be made no later than August 1, October 1, February 1, and April 1 of each year, at the discretion of the materiel administrator.

(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 1194, § 2; Laws 1995, LB 7, § 119; Laws 2003, LB 424, § 6.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **81-1120.01 Communications system; declaration of legislative purpose.**

The Legislature hereby declares that an efficient and reliable communications system is vital to the state during the conduct of regular business of the state and in times of emergency and that substantial economies can be effected by joint use of a consolidated communications system by departments, agencies, and subdivisions of state government. It is, therefor, declared to be the purpose of sections 23-1715, 81-1108.02, 81-1120.01 to 81-1120.03, 81-1120.15 to 81-1120.28, and 81-1423 and the policy of the state to provide for the continual development of an efficient and reliable communications system for joint use by departments, agencies, and subdivisions of state government, to effect maximum practical consolidation and joint use of existing communications facilities and services owned or used by the state, and generally to coordinate all communications functions and activities of state government.

**Source:** Laws 1967, c. 572, § 1, p. 1879; Laws 1975, LB 427, § 3; Laws 1984, LB 1125, § 4; Laws 1986, LB 965, § 21.

### **81-1120.02 Terms, defined.**

As used in sections 81-1120.01 to 81-1120.29, unless the context otherwise requires:

- (1) Director means the Director of Communications;
- (2) Division means the division of communications of the office of Chief Information Officer;
- (3) Communications system means the total communications facilities and equipment owned, leased, or used by all departments, agencies, and subdivisions of state government; and
- (4) Communications means any transmission, emission, or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

**Source:** Laws 1967, c. 572, § 2, p. 1880; Laws 1971, LB 675, § 3; Laws 1975, LB 427, § 4; Laws 1984, LB 1125, § 5; Laws 1986, LB 965, § 22; Laws 2000, LB 893, § 2; Laws 2006, LB 921, § 6; Laws 2011, LB378, § 26.

### **81-1120.03 Office of Chief Information Officer; division of communications; creation; Director of Communications; appointment; qualifications.**

There is hereby created, within the office of Chief Information Officer, a division of communications to be headed by the Director of Communications.

The Chief Information Officer shall appoint as Director of Communications any person who has not less than six years' experience in a position or positions which include responsibility for management, purchase, lease, or control of communications for a private or governmental enterprise. No person shall hold the position of director who is directly or indirectly interested in any communications common carrier or other company engaged in the furnishing of communications services or facilities, but investment in stock of a communications common carrier in an amount determined by the Chief Information Officer to be not significant shall not be considered disqualifying.

**Source:** Laws 1967, c. 572, § 3, p. 1880; Laws 1971, LB 675, § 4; Laws 1975, LB 427, § 5; Laws 2000, LB 893, § 3; Laws 2006, LB 921, § 7.

**81-1120.04 Transferred to section 81-1120.17.**

**81-1120.05 Transferred to section 81-1120.18.**

**81-1120.06 Transferred to section 81-1120.19.**

**81-1120.07 Transferred to section 81-1120.20.**

**81-1120.08 Transferred to section 81-1120.22.**

**81-1120.09 Transferred to section 81-1120.23.**

**81-1120.10 Transferred to section 81-1120.24.**

**81-1120.11 Transferred to section 81-1120.25.**

**81-1120.12 Transferred to section 81-1120.26.**

**81-1120.13 Transferred to section 81-1120.27.**

**81-1120.14 Transferred to section 81-1120.28.**

**81-1120.15 Director of Communications; powers, duties, and responsibilities.**

The Director of Communications shall have the following powers, duties, and responsibilities:

(1) To provide the Legislature and the Governor technical assistance, advice, and information concerning the financial and administrative operations of the communications systems of all agencies of the state;

(2) To provide the Legislature and the Governor recommendations for dealing with financial, management, and organizational problems affecting the communications systems and services of the state, its departments and agencies. The recommendations submitted to the Legislature shall be submitted electronically;

(3) To make inquiries of the agencies as to their communications charges and prepare cost comparisons to insure that uniformity, efficiency, and equality be achieved within the communications system;

(4) To make recommendations to the agencies pertaining to revisions to internal systems as may be necessary to promote frugality and economy in the communications system; and

(5) To provide services such as system review, system design, feasibility studies, equipment reviews, and for long-range planning and management service within the division of communications.

**Source:** Laws 1975, LB 427, § 6; Laws 1979, LB 322, § 50; Laws 1981, LB 545, § 33; Laws 2012, LB782, § 189.

**81-1120.16 Director of Communications; powers and duties; investigation; report.**

It shall be the duty of the director to consult each department, office, board, bureau, commission, or institution in the state for which money is to be appropriated and expended for communications services, equipment, or facilities, including the executive and judicial departments, state colleges, university, and state institutions. The director shall make or cause to be made under his or her supervision an investigation to determine whether the appropriations are being judiciously and economically expended for the purposes for which they were made and shall transmit to the Governor, the Legislative Fiscal Analyst, and the expending agency a complete report of each such investigation. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. In making such investigations he or she shall, at all reasonable times, have access to the offices of all state departments, boards, bureaus, commissions, and institutions and may, for the purpose of obtaining information as to the operation and communications needs thereof, examine the books, papers, and public records therein, and the agencies shall, through their proper officers, furnish such data, information, or statements as may be requested of them.

**Source:** Laws 1975, LB 427, § 7; Laws 2006, LB 921, § 8; Laws 2012, LB782, § 190.

**81-1120.17 Division of communications; powers and duties.**

The division of communications shall have the following duties, powers, and responsibilities:

(1) To coordinate the purchase, lease, and use of communications services equipment and facilities for state government;

(2) To advise departments and agencies of the state and political subdivisions thereof as to systems or methods to be used to meet requirements efficiently and effectively;

(3) To provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section 86-521;

(4) To consolidate and integrate radio communications systems and services of state agencies so far as practical and to provide for their joint use by the agencies;

(5) To consolidate telephone and telephone-related activities, so far as practical, and to provide for their joint use by the agencies;

(6) To assume management responsibility for any consolidated system or service and approve all purchases and contracts for such communications activities;

(7) To enter into agreements for the mutual support and use of communications services of the agencies and departments of state government and its political subdivisions;

(8) To provide for the rendering of mutual aid between state government and its political subdivisions and to cooperate with other states and the federal government with respect to the organizing of communications in expediting the carrying out of mutual aid in disasters, emergencies, and civil defense emergencies under the Emergency Management Act;

(9) To use or acquire communications facilities now owned or operated by any state agency and to compensate such agency when appropriate;

(10) To standardize policies and procedures for the use of such services in such a manner that communications systems in the domain of public safety or security not be compromised;

(11) To assume responsibility for the maintenance and repair of state-owned communications facilities so far as practical;

(12) To coordinate and consolidate maintenance and repair procedures and facilities so far as possible in the light of good business practice and the requirements of the agencies and departments concerned;

(13) Subject to the conditions provided in section 81-1120.19, to contract with qualified suppliers and communications common carriers for communications facilities or services, including private-line services;

(14) To apply for, receive, coordinate, and hold or, if appropriate, assist agencies in applying for, receiving, or holding such authorizations, licenses, and allocations of channels and frequencies as are necessary to carry out the purposes of sections 81-1120.01 to 81-1120.03 and 81-1120.15 to 81-1120.28;

(15) To acquire real estate, equipment, and other property as an agency of the state, subject to the provisions of section 81-1120.19;

(16) To cooperate with the Nebraska Emergency Management Agency as to its needs for emergency communications services; and

(17) To insure that communications facilities are not used for any purpose which is contrary to the policy and intent of sections 81-1120.01 to 81-1120.03 and 81-1120.15 to 81-1120.28 or contrary to the laws and agreements under which the facilities are to be utilized.

**Source:** Laws 1967, c. 572, § 4, p. 1881; R.R.S.1943, § 81-1120.04; Laws 1975, LB 427, § 8; Laws 1996, LB 43, § 50; Laws 1998, LB 924, § 39; Laws 2002, LB 1105, § 507.

#### Cross References

Emergency Management Act, see section 81-829.36.

### **81-1120.18 Division of communications; form advisory boards; expenses.**

The division of communications may form temporary advisory boards to provide advice in the development, management, administration, and operation of a consolidated communications system to meet the communications requirements of all departments and agencies of state government. Board members shall be selected by the division and shall receive no compensation for duties performed as members of a board, but shall be reimbursed for actual expenses incurred while engaged in the performance of their duties under the provisions of sections 23-1715, 81-1108.02, 81-1120.01 to 81-1120.03, 81-1120.15 to

81-1120.28, and 81-1423 as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1967, c. 572, § 5, p. 1882; R.R.S.1943, § 81-1120.05; Laws 1975, LB 427, § 9; Laws 1981, LB 204, § 190; Laws 1981, LB 381, § 32; Laws 1984, LB 1125, § 6; Laws 1986, LB 965, § 23.

#### **81-1120.19 Division of communications; powers; limitation.**

The division shall have authority to purchase or lease communications facilities, services, or channels on terms which are for the best interests of the State of Nebraska. In making the decision as to what proposal is for the best interests of the state, the decision of the division shall be based upon, but not necessarily limited to, (1) the total cost to the state, computed in accordance with accepted governmental cost-accounting procedures taking into account taxes to be paid or foregone, interest rates, and obsolescence; (2) the quality of the service offered; (3) the comprehensiveness of the proposed facilities or plan; (4) the financial responsibility of the supplier or carrier submitting the proposal; (5) the repair and maintenance capabilities of the supplier or carrier; (6) the experience as a communications carrier or supplier, as applicable; and (7) the alternate methods or facilities available. The powers conferred by this section shall be subject to the condition that, except for existing state-owned facilities, the division shall obtain all telecommunications service as defined in section 86-121 from telecommunications carriers that are certificated or permitted by, or registered with, the Public Service Commission for any area in which such services are rendered. Any purchase or lease, except from such telecommunications carriers, made by the division shall be made through the materiel division of the Department of Administrative Services pursuant to the functions, powers, and duties of such division.

**Source:** Laws 1967, c. 572, § 6, p. 1883; Laws 1971, LB 675, § 5; R.R.S.1943, § 81-1120.06; Laws 1975, LB 427, § 10; Laws 2002, LB 1105, § 508; Laws 2003, LB 112, § 1.

#### **Cross References**

**Telecommunications carriers**, certification and permit requirements, see sections 86-128 and 86-129.

#### **81-1120.20 Joint use of communications; departments; agencies; cooperation.**

Personnel of all departments, offices, and agencies of state government shall cooperate and assist to the maximum extent possible in the consolidation, redistribution, and joint use of communications systems and services used by and under the direction of such departments or agencies and shall coordinate all communications services or facilities procurement through the Director of Communications.

**Source:** Laws 1967, c. 572, § 7, p. 1883; R.R.S.1943, § 81-1120.07; Laws 1975, LB 427, § 11.

#### **81-1120.21 Repealed. Laws 1994, LB 948, § 1.**

#### **81-1120.22 Director of Communications; develop system of billings and charges; payment; deposit.**

The Director of Communications shall develop a system of equitable billings and charges for communications services provided in any consolidated or joint-

use system of communications. Such system of charges shall reflect, as nearly as may be practical, the actual share of costs incurred on behalf of or for services to each department, agency, or political subdivision provided communications services. Using agencies shall pay for such services out of appropriated or available funds. Prior to July 1, 2011, all payments shall be credited to the Communications Cash Fund. Beginning July 1, 2011, all payments shall be credited to the Communications Revolving Fund. Prior to July 1, 2011, all collections for payment of telephone expenses shall be credited to the Telephone Expense Revolving Fund which is hereby created. Beginning July 1, 2011, all collections for payment of telephone expenses shall be credited to the Communications Revolving Fund. On July 1, 2011, or as soon thereafter as is administratively possible, the State Treasurer shall transfer any money in the Telephone Expense Revolving Fund to the Communications Revolving Fund. On July 31, 2011, the Telephone Expense Revolving Fund shall terminate.

**Source:** Laws 1967, c. 572, § 8, p. 1883; Laws 1969, c. 584, § 109, p. 2416; Laws 1973, LB 431, § 1; Laws 1974, LB 1048, § 42; R.R.S.1943, § 81-1120.08; Laws 1975, LB 427, § 13; Laws 1995, LB 7, § 120; Laws 2011, LB378, § 27.

#### **81-1120.23 Communications Cash Fund; established; purpose; investment.**

There is hereby established a cash fund to be known as the Communications Cash Fund. Appropriations made to the division of communications of the office of Chief Information Officer for the purposes of sections 81-1120.01 to 81-1120.28 shall be credited to the fund. All funds received under such sections and all funds received for communications services provided to any agency, department, or other user shall be credited to the fund. The division shall, under policies and procedures established by the director, expend funds from time to time credited to the fund for the communications purposes enumerated in such sections. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Communications 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. On July 1, 2011, or as soon thereafter as is administratively possible, the State Treasurer shall transfer any money in the Communications Cash Fund to the Communications Revolving Fund. On July 31, 2011, the Communications Cash Fund shall terminate.

**Source:** Laws 1967, c. 572, § 9, p. 1883; Laws 1971, LB 675, § 6; Laws 1973, LB 431, § 2; R.R.S.1943, § 81-1120.09; Laws 1975, LB 427, § 14; Laws 1984, LB 1125, § 7; Laws 1986, LB 965, § 24; Laws 1992, LB 858, § 3; Laws 1994, LB 1066, § 103; Laws 2006, LB 921, § 9; Laws 2009, First Spec. Sess., LB3, § 71; Laws 2011, LB378, § 28.

#### **Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **81-1120.24 Nebraska educational television network; exempt from sections; when.**

Sections 23-1715, 81-1108.02, 81-1120.01 to 81-1120.03, 81-1120.15 to 81-1120.28, and 81-1423 shall not apply to the Nebraska educational television

network except for such services or assistance as may be mutually beneficial and agreed upon by and between the division of communications and the Nebraska Educational Television Commission. Under conditions of emergency declared by the Governor, the communications resources of the Nebraska educational television network shall be coordinated with the communications system, as directed by the Governor, so as to provide full use of available services in the rendering of public assistance and providing aid and protection to life and property.

**Source:** Laws 1967, c. 572, § 10, p. 1884; Laws 1971, LB 675, § 7; R.R.S.1943, § 81-1120.10; Laws 1975, LB 427, § 15.

#### **81-1120.25 Emergency; Governor; direct assumption of control.**

In the event of an emergency, the Governor may direct the assumption of control over all or part of the communications system pursuant to the Emergency Management Act.

**Source:** Laws 1967, c. 572, § 11, p. 1884; R.R.S.1943, § 81-1120.11; Laws 1975, LB 427, § 16; Laws 1996, LB 43, § 51.

#### **Cross References**

Emergency Management Act, see section 81-829.36.

#### **81-1120.26 Director of Communications; state or political subdivision; gifts, property; accept; purpose; procedure.**

The Director of Communications is hereby authorized to receive gifts, contributions, property and equipment from public or private sources to be utilized in providing communications services, and to participate with the federal government in carrying out programs for communications services within the State of Nebraska. Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, communications services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of communications system objectives, the state, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its executive officer or governing body, may accept such offer and upon such acceptance the Governor or executive officer or governing body of such political subdivision may authorize any officer of the state or such political subdivision to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and rules and regulations, if any, of the agency making the offer.

**Source:** Laws 1967, c. 572, § 12, p. 1884; R.R.S.1943, § 81-1120.12; Laws 1975, LB 427, § 17.

#### **81-1120.27 Telecommunications system; uses; member of Legislature; long-distance calls; how made.**

(1) The facilities of the state's telecommunications systems are provided for the conduct of state business. In addition, the state's telecommunications systems, cellular telephones, electronic handheld devices, or computers may be used by state employees and officials for emails, text messaging, local calls, and long-distance calls to children at home, teachers, doctors, day care centers, baby-sitters, family members, or others to inform them of unexpected schedule

changes, and for other essential personal business. Any such use for essential personal business shall be kept to a minimum and shall not interfere with the conduct of state business. A state employee or official shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. The Department of Administrative Services may establish procedures for reimbursement of charges pursuant to this section.

(2) A member of the Legislature, while engaged in legislative business, may make personal long-distance calls on the state telecommunications system or by using his or her state credit card. At the end of every month upon the member's receipt of his or her long-distance call record, the personal long-distance calls shall be designated by the member and the member billed for such calls. Reimbursement to the state for such personal long-distance calls by the member shall be made within thirty days from the date of designation.

(3) A member of the Legislature, at his or her own sole discretion, may designate any long-distance call as sensitive or confidential in nature. If a long-distance call is designated as sensitive or confidential in nature, any long-distance call record used in an audit shall contain only the date the long-distance call was made and the cost of the call. In no case shall the person conducting the audit have access to a long-distance call number designated as sensitive or confidential in nature by the member without the written consent of the member. No calls made to or by a member of the Legislature which are sensitive or confidential in nature shall be required to be disclosed except that such calls shall be so designated by the member, and only the amount of the call and such designation shall be made available to a person conducting an audit.

For purposes of this subsection, sensitive or confidential in nature shall mean that either the member of the Legislature or the caller would reasonably expect that the nature or the content of the call would not be disclosed to another person without the consent of the member and the caller.

**Source:** Laws 1967, c. 572, § 13, p. 1885; R.R.S.1943, § 81-1120.13; Laws 1975, LB 427, § 18; Laws 1992, LB 722, § 3; Laws 1993, LB 579, § 3; Laws 2009, LB626, § 6.

**81-1120.28 Communications system; not to function as news agency; information; privileged; exceptions.**

The communications system and the director shall not function as a public information or news agency. Communications transmitted on or through the communications system shall be the privileged information of the sender and receiver; *Provided*, that this shall not prohibit the sender or receiver from releasing to others or to the public such information; *and provided further*, that in the event of an emergency, the Governor shall have the power to direct release of such information as he deems in the best interests of the state.

**Source:** Laws 1967, c. 572, § 14, p. 1885; R.R.S.1943, § 81-1120.14; Laws 1975, LB 427, § 19.

**81-1120.29 Communications Revolving Fund; established; use; investment.**

There is hereby established a revolving fund to be known as the Communications Revolving Fund. Beginning July 1, 2011, appropriations made to the division of communications of the office of Chief Information Officer for the purposes of sections 81-1120.01 to 81-1120.28 shall be credited to the fund.

Beginning July 1, 2011, all funds received under such sections and all funds received for communications services provided to any agency, department, political subdivision, or other user shall be credited to the fund. The division shall, under policies and procedures established by the director, expend funds from time to time credited to the fund for the communications purposes enumerated in such sections. Any money in the Communications 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 2011, LB378, § 29.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1120.30 Repealed. Laws 1986, LB 965, § 26.**

**81-1120.31 Repealed. Laws 1986, LB 965, § 26.**

**81-1120.32 Repealed. Laws 2000, LB 654, § 57.**

**81-1120.33 Repealed. Laws 2000, LB 654, § 57.**

**81-1120.34 Repealed. Laws 2000, LB 654, § 57.**

**81-1120.35 Transferred to section 86-551.**

**81-1120.36 Transferred to section 86-552.**

**81-1120.37 Transferred to section 86-562.**

**81-1120.38 Transferred to section 86-563.**

**81-1120.39 Repealed. Laws 2000, LB 654, § 57.**

**81-1120.40 Transferred to section 86-567.**

**81-1121 Warrants; preparation and issuance; funds transfer systems; payment by mistake; adjustment.**

(1)(a) The Director of Administrative Services shall have power to develop and implement a system of warrant preparation and issuance in accordance with acceptable accounting and internal control safeguards and by use of such mechanical means as may be most economical.

(b) Warrant or state warrant shall include an order drawn by the director upon the State Treasurer, directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (2) and (3) of this section, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the director and the State Treasurer. The warrant, when it is an order drawn by the director upon the State Treasurer directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (2) and (3) of this section, shall affect the state's cash balance in the bank when redeemed by the State Treasurer, not when cashed by a financial institution.

(2) The director shall sign each warrant or shall cause each warrant to be signed in his or her behalf either personally, by delegation of authority, or by facsimile signature as will assure the most economical, timely, and practical means for making payments from the state treasury and which means provides the most acceptable safeguarding of public funds. The signature of the director shall signify that the payment intended by a warrant bearing such signature is proper under the appropriate laws of the state.

(3) The State Treasurer shall countersign all warrants issued by the director.

(4) The State Treasurer shall make such arrangements for facsimile signature of warrants as will assure the most economical, timely, and practical means for making payments from the state treasury.

(5) The director and the State Treasurer may establish and operate an electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the director and the State Treasurer for the payment of funds from and the deposit of receipts into the state treasury. Any state agency that wishes to establish and operate such a system shall jointly establish the procedures necessary to implement such a system with the cooperation of the director and the State Treasurer. The system shall be designed to be compatible with state accounting procedures. Such a system as established by the director shall employ internal control safeguards and after meeting such safeguards shall be deemed to satisfy any signature requirements. The use of an electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the director and the State Treasurer or any state agency shall not create any rights that would not have been created had an order, drawn by the director upon the State Treasurer directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (2) and (3) of this section, been used as the payment medium.

(6) Whenever it is ascertained that by mistake or otherwise any county treasurer or other person has paid into the state treasury any sum not due the state, the director shall refund to such county treasurer or other person the amount so paid. Such refund shall be carried on the books of the state as an adjustment to income and not as an expenditure or disbursement.

(7) Whenever it is ascertained that by mistake or otherwise the State of Nebraska or any of its departments, agencies, or officers shall have caused to be made a disbursement which for any reason is refunded to the state, the amount so disbursed and refunded to the state shall be credited to the fund and account from which the disbursement was made as an adjustment of expenditures and disbursements and not as a receipt. Such credited refund shall be considered part of the original appropriation to the department or agency and to the appropriate program and may be expended therefrom without further or additional appropriation. When a refund to the state or any of its departments or agencies is related to a transaction which occurred during a prior fiscal period, the refund shall be credited to the unappropriated surplus account of the fund from which the disbursement was originally made, except that medic-aid refunds or rebates for (a) pharmaceuticals, (b) third-party liability recover-

ies, and (c) surveillance and utilization reviews which have occurred during a prior fiscal period shall be treated as an adjustment to expenditures in the year in which the refund or rebate is received.

**Source:** Laws 1965, c. 538, § 21, p. 1709; Laws 1989, LB 546, § 1; Laws 1993, LB 236, § 1; Laws 2001, LB 257, § 2.

**81-1122 Repealed. Laws 1995, LB 15, § 6.**

**81-1123 Repealed. Laws 1985, LB 12, § 1.**

**81-1124 Repealed. Laws 1985, LB 12, § 1.**

**81-1125 Repealed. Laws 1985, LB 12, § 1.**

**81-1125.01 Director of Administrative Services; reports and statements required; to whom made.**

It shall be the duty of the Director of Administrative Services to digest, prepare, and report to the Governor, the Tax Commissioner, the Clerk of the Legislature, and the Legislative Fiscal Analyst, at least twenty days before the commencement of each regular session of the Legislature:

(1) The Annual Budgetary Report showing the condition of the treasury, and the amount of the expenditures for the last fiscal year;

(2) The Comprehensive Annual Financial Report showing fully all liabilities and resources of the state; and

(3) Such plans as he or she may deem expedient for (a) the support of public credit, (b) lessening the public expenses, (c) using the public money to the best advantage, (d) promoting frugality and economy in public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the state, and (e) securing uniformity and efficiency in the levying and collecting of taxes, systematizing the work to be done by officers having duties to perform under the revenue law.

The reports submitted to the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the reports required by this section by making a request for it to the director.

**Source:** R.S.1866, c. 4, § 3, p. 19; R.S.1913, § 5545; C.S.1922, § 4847; C.S.1929, § 84-303; R.S.1943, § 84-303; Laws 1965, c. 459, § 24, p. 1464; Laws 1979, LB 322, § 51; Laws 2012, LB782, § 191; Laws 2014, LB974, § 10.  
Effective date April 3, 2014.

**81-1126 United States Savings Bond; payroll deduction; procedure.**

At such time as the State of Nebraska shall adopt for its state government centralized accounting and payroll systems, and following a determination by the Governor that costs of administering a United States Savings Bond withholding program shall not exceed ten thousand dollars annually, any official or employee of the State of Nebraska may authorize, in writing, the withholding from each pay period salary of a designated sum of not less than one dollar and twenty-five cents, or multiples thereof, for the purpose of purchasing United States Savings Bonds. The administrator of sections 81-1126 to 81-1129, to be designated by the Governor, having responsibility and authority for preparation of payrolls, shall upon receipt of such authorization for withholding, withhold

such sum from the salary or compensation of such officer or employee for the period and in the amount stated in the authorization.

**Source:** Laws 1965, c. 542, § 1, p. 1728; Laws 1975, LB 448, § 1.

**81-1127 United States Savings Bond; funds withheld; purchase of bonds.**

The funds mentioned in section 81-1126 shall be used for purchasing United States Savings Bonds issued by the United States Government whenever any person shall have to his credit a sufficient sum of such withheld funds to buy any such bond in behalf of the person entitled thereto. The administrator of sections 81-1126 to 81-1129 shall make such arrangements with an issuing agent or agents for United States Savings Bonds to purchase and deliver such bond or bonds to the person designated in the authorization mentioned in section 81-1126. Funds disbursed for purchase of United States Savings Bonds under sections 81-1126 to 81-1129 shall be by warrant drawn in behalf of the person entitled thereto and to the order of the issuing agent for United States Savings Bonds.

**Source:** Laws 1965, c. 542, § 2, p. 1729.

**81-1128 United States Savings Bond; withholding of funds; cease, when.**

The administrator of sections 81-1126 to 81-1129 shall cease to withhold any of the funds mentioned in section 81-1126 from any of such salaries or compensation under the authorization upon: (1) Termination of employment; or (2) written notice of cancellation of such authorization of the allotment thereunder. Upon such termination the money, if any, so allotted, which has not been invested in bonds shall be remitted to the official or employee from whose salary or compensation such money has been withheld.

**Source:** Laws 1965, c. 542, § 3, p. 1729.

**81-1129 United States Savings Bond; administrator; relieved of liability.**

The administrator of sections 81-1126 to 81-1129 shall not incur any liability under the bonds required of him on account of the duties imposed upon him under sections 81-1126 to 81-1129.

**Source:** Laws 1965, c. 542, § 4, p. 1730.

**81-1130 Repealed. Laws 1976, LB 442, § 10.**

**81-1131 Repealed. Laws 1986, LB 1080, § 1.**

**81-1132 Repealed. Laws 1986, LB 1080, § 1.**

**81-1133 Repealed. Laws 1986, LB 1080, § 1.**

**81-1134 Repealed. Laws 1986, LB 1080, § 1.**

**81-1135 Repealed. Laws 1986, LB 1080, § 1.**

**81-1136 Repealed. Laws 1985, LB 421, § 6.**

**81-1137 Repealed. Laws 1986, LB 1080, § 1.**

**81-1138 Repealed. Laws 1986, LB 1080, § 1.**

**81-1139 Public Works and Economic Act; acceptance by State of Nebraska; state agencies, participate in excess property program.**

(1) The State of Nebraska hereby assents to the provisions of section 514 of the Public Works and Economic Act of 1965, as amended, 42 U.S.C. 3193, and to 13 C.F.R. part 570, and authorizes the various state agencies of the State of Nebraska to participate in the excess property program administered pursuant to such act and regulations.

(2) In accordance with the authorization granted in subsection (1) of this section, each such state agency is authorized to procure and maintain, at its own cost, public bodily injury liability and public property damage liability insurance as required by such act and regulations and pursuant to the obligations and limits established in the administration of the excess property program. Such insurance shall be purchased from existing appropriations of the participating state agency.

**Source:** Laws 1976, LB 998, § 1.

**81-1139.01 Stone Office Building; Department of Administrative Services; Department of Health and Human Services; limitations.**

Until June 30, 1993, the Department of Administrative Services shall be limited to the same rental rate on the Stone Office Building at the Norfolk Regional Center as existed on January 1, 1992. The Department of Health and Human Services shall be limited to reimbursement from the counties maintaining office space in the Stone Office Building pursuant to section 68-130 in the same amount such counties paid for rental of such space on January 1, 1992.

**Source:** Laws 1992, LB 1241, § 2; Laws 1996, LB 1044, § 865; Laws 2007, LB296, § 754.

(b) STATE OFFICE WASTEPAPER RECYCLING

**81-1140 Repealed. Laws 1986, LB 380, § 7.**

**81-1140.01 Transferred to section 81-1644.**

**81-1140.02 Transferred to section 81-1643.**

**81-1140.03 Transferred to section 81-1645.**

**81-1140.04 Transferred to section 81-1646.**

**81-1140.05 Transferred to section 81-1647.**

**81-1140.06 Transferred to section 81-1648.**

**81-1141 Repealed. Laws 1986, LB 380, § 7.**

**81-1142 Repealed. Laws 1986, LB 380, § 7.**

**81-1143 Repealed. Laws 1986, LB 380, § 7.**

**81-1144 Repealed. Laws 1986, LB 380, § 7.**

**81-1145 Repealed. Laws 1986, LB 380, § 7.**

- 81-1146 Repealed. Laws 1986, LB 380, § 7.
- 81-1147 Repealed. Laws 1986, LB 380, § 7.
- 81-1148 Repealed. Laws 1986, LB 380, § 7.
- 81-1149 Repealed. Laws 1986, LB 380, § 7.
- 81-1150 Repealed. Laws 1986, LB 380, § 7.
- 81-1151 Repealed. Laws 1986, LB 380, § 7.
- 81-1152 Repealed. Laws 1986, LB 380, § 7.
- 81-1153 Repealed. Laws 1986, LB 380, § 7.
- 81-1154 Repealed. Laws 1986, LB 380, § 7.
- 81-1155 Repealed. Laws 1986, LB 380, § 7.
- 81-1156 Repealed. Laws 1986, LB 380, § 7.
- 81-1157 Repealed. Laws 1986, LB 380, § 7.
- 81-1158 Repealed. Laws 1986, LB 380, § 7.
- 81-1159 Repealed. Laws 1986, LB 380, § 7.
- 81-1160 Repealed. Laws 1986, LB 380, § 7.
- 81-1161 Repealed. Laws 1986, LB 380, § 7.

(c) FORMS MANAGEMENT PROGRAM

- 81-1162 Repealed. Laws 2007, LB 256, § 17.
- 81-1163 Repealed. Laws 2007, LB 256, § 17.
- 81-1164 Repealed. Laws 2007, LB 256, § 17.
- 81-1165 Repealed. Laws 2007, LB 256, § 17.
- 81-1166 Repealed. Laws 2007, LB 256, § 17.
- 81-1167 Repealed. Laws 2007, LB 256, § 17.
- 81-1168 Repealed. Laws 2007, LB 256, § 17.
- 81-1169 Repealed. Laws 2007, LB 256, § 17.

(d) REQUESTS FOR PAYMENTS FROM THE STATE

81-1170 Transferred to section 77-2106.03.

**81-1170.01 Requests; examination and adjustment by department; warrants for mileage.**

All requests of whatever nature upon the treasury of this state, before any warrant is drawn for the payment of the same, shall be examined, adjusted, and approved by the Department of Administrative Services. All such requests shall

be presented to the Director of Administrative Services with such documentation as required in the Nebraska Accounting System Manual on file with the Clerk of the Legislature and shall be audited and settled within two years after the request accrues. No warrants shall be drawn for any request until an appropriation has been made therefor. No warrant for any request for payment or reimbursement of any mileage or other traveling expense shall be issued unless the same is computed strictly in accordance with sections 81-1174 to 81-1177 except as otherwise provided in section 55-157.

**Source:** Laws 1877, § 1, p. 202; R.S.1913, § 6680; C.S.1922, § 6217; C.S.1929, § 77-2606; Laws 1933, c. 96, § 14, p. 394; Laws 1941, c. 180, § 5, p. 703; C.S.Supp.,1941, § 77-2606; R.S.1943, § 77-2406; Laws 1965, c. 538, § 26, p. 1714; R.S.1943, (1986), § 77-2406; Laws 1988, LB 864, § 14; Laws 2012, LB1141, § 2.

Requests need not be made under this section before filing suit in retirement benefits controversies. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

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).

Order disallowing claim can be reviewed only by appeal. *Pickus v. State*, 115 Neb. 869, 215 N.W. 129 (1927).

Under former law, auditor could be compelled by mandamus to pass on claim and record action. *State ex rel. Society of Home for Friendless v. Cornell*, 56 Neb. 143, 76 N.W. 459 (1898).

Under former law, Auditor of Public Accounts acted in ministerial capacity in issuing warrants in satisfaction of claims. *State ex rel. Ansley v. Weston*, 5 Neb. Unof. 576, 99 N.W. 520 (1904).

### **81-1170.02 Requests; second presentation prohibited.**

No request which has been once presented to the Department of Administrative Services and has been disallowed in whole or in part shall ever be again presented to such office or in any manner acted upon by it but shall be forever barred.

**Source:** Laws 1877, § 4, p. 203; R.S.1913, § 6683; C.S.1922, § 6220; C.S.1929, § 77-2609; R.S.1943, § 77-2409; Laws 1965, c. 538, § 27, p. 1714; R.S.1943, (1986), § 77-2409; Laws 1988, LB 864, § 15.

### **81-1170.03 Request; allowance in part; issuance of warrant.**

When a request has been in part allowed by the Department of Administrative Services, a warrant shall be drawn as in other cases in which the whole request is allowed.

**Source:** Laws 1877, § 5, p. 203; R.S.1913, § 6684; C.S.1922, § 6221; C.S.1929, § 77-2610; R.S.1943, § 77-2410; R.S.1943, (1986), § 77-2410; Laws 1988, LB 864, § 16.

State warrant is not negotiable instrument. *Bartley v. State*, 53 Neb. 310, 73 N.W. 744 (1898).

### **81-1170.04 Request for payment; form of vouchers.**

The Director of Administrative Services shall prepare blank forms of vouchers for use in all the state's departments and for the use of all manner of requesters to the state who receive their pay by warrants drawn by the director upon the State Treasurer, excepting requests examined, approved, and certified to the director by the Board of Regents of the University of Nebraska, as

provided by law. The vouchers shall be issued in original, duplicate, or triplicate forms as the necessities of the special institution may require.

**Source:** Laws 1895, c. 65, § 1, p. 234; Laws 1897, c. 73, § 1, p. 332; R.S.1913, § 6686; C.S.1922, § 6223; C.S.1929, § 77-2612; R.S. 1943, § 77-2412; Laws 1984, LB 933, § 9; R.S.1943, (1986), § 77-2412; Laws 1988, LB 864, § 17.

Statute providing for refund of excessive grain inspection fees is valid where it requires statutory procedure for presentation, examination and payment of claims to be followed. *Bollen v. Price*, 129 Neb. 342, 261 N.W. 689 (1935).

Section applies to claims against state university. *State ex rel. Board of Regents v. Moore*, 46 Neb. 373, 64 N.W. 975 (1895).

Section applies to claim for fixed salary of clerk. *State ex rel. Simons v. Cornell*, 51 Neb. 553, 71 N.W. 300 (1897).

#### **81-1170.05 False statement; penalty.**

Any person making any false statement as to any material thing in a request for payment or reimbursement shall be deemed guilty of perjury and shall be punished accordingly.

**Source:** Laws 1895, c. 65, § 5, p. 236; R.S.1913, § 6690; C.S.1922, § 6227; C.S.1929, § 77-2616; R.S.1943, § 77-2416; Laws 1953, c. 285, § 2, p. 923; R.S.1943, (1986), § 77-2416; Laws 1988, LB 864, § 18.

#### **81-1171 Debt or request; treatment as setoff; presentation to director; required.**

In all suits brought in behalf of the state, no debt or request for payment or reimbursement shall be allowed against the state as a setoff unless it has been exhibited to the Director of Administrative Services and allowed or disallowed by him or her except only in cases when it is proved to the satisfaction of the court that the defendant at the time of the trial is in possession of vouchers which he or she could not produce to the director or that he or she was prevented from exhibiting the requests to the director by absence from the state, sickness, or unavoidable accident. The director shall in no case audit a request or setoff which is not provided by law.

**Source:** R.S.1866, c. 4, § 6, p. 22; R.S.1913, § 5548; C.S.1922, § 4850; C.S.1929, § 84-306; Laws 1933, c. 96, § 22, p. 399; Laws 1941, c. 180, § 10, p. 706; C.S.Supp.,1941, § 84-306; R.S.1943, § 84-306; Laws 1945, c. 253, § 1, p. 790; Laws 1949, c. 286, § 2, p. 985; Laws 1949, c. 243, § 4(5), p. 662; R.S.1943, (1981), § 84-306.04; Laws 1988, LB 864, § 59.

**81-1172 Repealed. Laws 1988, LB 864, § 72.**

**81-1173 Repealed. Laws 1988, LB 864, § 72.**

#### (e) PAYMENT OF EXPENSES

#### **81-1174 Reimbursement for expenses; contents; automobile; airplane; statement required; receipts; limitation.**

Whenever any state officer, state employee, or member of any commission, council, committee, or board of the state is seeking reimbursement for actual expenses incurred by him or her in the line of duty, he or she shall be required

to present a request for payment or reimbursement to the Director of Administrative Services not later than sixty days after the final day on which expenses were incurred for which reimbursement is sought. Each request shall be fully itemized, including the amount, date, place, and essential character of the expense incurred.

When reimbursement is requested for mileage by automobile, air travel by commercial carrier, air travel in airplanes chartered by the department or agency, or air travel by personally rented airplane, the points between which such travel occurred, the times of arrival and departure, and the necessity and purpose of such travel shall be stated on such request. When reimbursement is requested for mileage by automobile, the motor vehicle license plate number, the total miles traveled, and the rate per mile being requested shall also be shown on each request.

The Accounting Administrator may require less supporting detail for requests covered in this section but shall not impose reporting requirements which exceed those listed unless specifically authorized by other provisions of law. No request shall be submitted by an individual for an expense when such expense has been paid by the agency or department concerned.

When reimbursement for expenses incurred in air travel by privately owned airplane is requested, the cost of operating the airplane at rates per mile as established by the Department of Administrative Services shall be shown on such request. Travel by privately owned airplane or personally rented airplane shall only be authorized when it is more economical than surface transportation or will result in a substantial savings of expense or productive time.

The statement of expenses shall be duly verified and supported by receipts for all of such expenditures, except immaterial items identified by the director, for which reimbursement is requested.

No charge for mileage shall be allowed when such mileage accrues while using an automobile owned by the State of Nebraska.

No personal maintenance expenses shall be allowed to any state officer, state employee, or member of any commission, council, committee, or board of the state when such expenses are incurred in the city or town in which the residence or primary work location of such individual is located, except that individuals required to attend official functions, conferences, or hearings within such location, not to include normal day-to-day operations of the department, agency, commission, council, committee, or board, may be paid or reimbursed in accordance with policies established by the Director of Administrative Services. The approval to attend a function, conference, or hearing shall be obtained from the director of the department, agency, commission, council, committee, or board prior to an individual's attendance at such function, conference, or hearing.

Nothing in this section shall be construed to prohibit the furnishing of coffee, tea, and any similar beverage by the Legislature or the Legislative Council to its employees or guests.

**Source:** Laws 1941, c. 180, § 10, p. 706; C.S.Supp.,1941, § 84-306; R.S.1943, § 84-306; Laws 1945, c. 253, § 1, p. 790; Laws 1949, c. 286, § 2, p. 985; Laws 1949, c. 243, § 4(2), p. 660; Laws 1965, c. 568, § 1, p. 1854; Laws 1977, LB 365, § 1; Laws 1978, LB 869, § 1; Laws 1979, LB 576, § 7; Laws 1979, LB 578, § 1; Laws

1984, LB 663, § 1; Laws 1985, LB 413, § 1; R.S.Supp.,1986, § 84-306.01; Laws 1988, LB 864, § 60; Laws 1999, LB 32, § 2; Laws 2003, LB 292, § 17; Laws 2009, LB533, § 1.

**81-1175 Reimbursement for expenses; vouchers; written authorization; exceptions.**

In examining the vouchers, bills, and requests for payment or reimbursement as provided for in section 81-1174, no such voucher, bill, or request for travel expenses shall be approved unless written authorization for the same has been given by the (1) director, deputy director, or other titular head of the several state administrative departments, (2) elective or appointive state officer, (3) chairperson of a state commission, council, committee, or board, or (4) titular head or proper disbursing officer of any other state expending agency, including the University of Nebraska, state colleges, and state institutions, before such traveling expenses are incurred, except that such prior authority need not be obtained by peace officers of the State of Nebraska.

**Source:** Laws 1933, c. 96, § 22, p. 399; Laws 1941, c. 180, § 10, p. 706; C.S.Supp.,1941, § 84-306; R.S.1943, § 84-306; Laws 1945, c. 253, § 1, p. 790; Laws 1949, c. 286, § 2, p. 985; Laws 1949, c. 243, § 4(3), p. 661; Laws 1965, c. 568, § 2, p. 1856; Laws 1979, LB 576, § 8; R.S.1943, (1981), § 84-306.02; Laws 1988, LB 864, § 61.

**81-1176 Mileage; rates; how computed; adjustments; application.**

(1) If a trip or trips included in a request for payment or reimbursement filed under sections 81-1174 and 81-1175 are made by personal automobile or otherwise, only one mileage request shall be allowed for each mile actually and necessarily traveled in each calendar month by the most direct route regardless of the fact that one or more persons are transported in the same motor vehicle. Reimbursement on such requests shall be computed based on the rate established by the Department of Administrative Services. The department may establish different rates based on whether the personal automobile usage is at the convenience of the agency involved or at the convenience of the state officer or employee, as previously agreed upon by the officer or employee and the agency involved. Funds expended for parking may be requested in addition to mileage.

(2) The payment of mileage shall be limited to the actual cost of travel at the rates established in subsection (1) of this section or the cost of commercial transportation, whichever is less. Savings of productive time shall be taken into consideration when making the comparison. No additional rate of mileage shall be allowed to state inspectors or others who carry state equipment by motor vehicle regardless of the weight thereof.

(3) Any future adjustments made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

**Source:** Laws 1933, c. 96, § 22, p. 399; Laws 1941, c. 180, § 10, p. 706; C.S.Supp.,1941, § 84-306; R.S.1943, § 84-306; Laws 1945, c. 253, § 1, p. 790; Laws 1949, c. 286, § 2, p. 985; Laws 1949, c. 243, § 4(4), p. 661; Laws 1959, c. 440, § 2, p. 1481; Laws 1965, c. 568, § 3, p. 1856; Laws 1967, c. 592, § 2, p. 2012; Laws 1972, LB 859,

§ 1; Laws 1972, LB 1318, § 1; Laws 1973, LB 338, § 3; Laws 1974, LB 895, § 1; Laws 1975, LB 27, § 1; Laws 1978, LB 869, § 2; Laws 1979, LB 576, § 9; Laws 1980, LB 615, § 6; Laws 1981, LB 204, § 212; R.S.1943, (1981), § 84-306.03; Laws 1988, LB 864, § 62; Laws 1991, LB 653, § 1; Laws 1993, LB 697, § 2.

**81-1177 Uniform traveling expense account form; prescribed.**

The Director of Administrative Services is required to have prepared a uniform traveling expense account form to be used by all state officers and employees when making a request for payment or reimbursement for traveling expenses. No traveling expense request shall be approved for payment unless it is made on the form prescribed and furnished by the director.

**Source:** Laws 1941, c. 180, § 10, p. 706; C.S.Supp.,1941, § 84-306; R.S.1943, § 84-306; Laws 1945, c. 253, § 1, p. 790; Laws 1949, c. 286, § 2, p. 985; Laws 1949, c. 243, § 4(6), p. 662; Laws 1972, LB 1440, § 2; R.S.1943, (1981), § 84-306.05; Laws 1988, LB 864, § 63.

**81-1178 Member of any commission, committee, or board created by statute; expenses; reimbursement; manner.**

Any member of any state commission, council, committee, or board which has been created by statute shall be entitled to be reimbursed for expenses in the same manner as provided in sections 81-1174 to 81-1177 for state employees whether or not specific reference is made to such sections.

**Source:** Laws 1977, LB 365, § 2; Laws 1981, LB 204, § 213; R.S.1943, (1981), § 84-306.06.

**81-1179 Member of any commission, committee, or board created in compliance with federal action; expenses; reimbursement from federal funds.**

If the creation of any state commission, council, committee, or board is necessary for the purpose of compliance with acts of Congress, or federal rules and regulations resulting from such acts, the members thereof shall be entitled to be reimbursed for expenses incurred from federal funds available to pay such expenses.

**Source:** Laws 1977, LB 365, § 3; R.S.1943, (1981), § 84-306.07.

**81-1180 Member of any state commission, council, committee, or board; reimbursement for expenses; when.**

Any member of any state commission, council, committee, or board who is not entitled to reimbursement under the provisions of section 81-1178 or 81-1179 shall be entitled to be reimbursed for his or her necessary and actual expenses as provided in sections 81-1174 to 81-1177 if an appropriation is made for such purpose and if the reimbursement is approved by the Governor or, in cases in which the commission, council, committee, or board has been created to assist the Legislature in the performance of its duties, by the Executive Board of the Legislative Council.

**Source:** Laws 1977, LB 365, § 4; Laws 1981, LB 204, § 214; R.S.1943, (1981), § 84-306.08; Laws 1990, LB 1032, § 1.

**81-1181 Reimbursement of expenses; retroactive effect.**

The reimbursement of expenses before July 1, 1976, now authorized by section 81-1178, 81-1179, or 81-1180, is hereby ratified and shall not be subject to attack for the sole reason that it was not authorized at the time. All expenses authorized by section 81-1178, 81-1179, or 81-1180 which were incurred by a member of any state commission, council, committee, or board after July 1, 1976, for which reimbursement has not been made, shall be paid to such member pursuant to sections 81-1174 to 81-1181.

**Source:** Laws 1977, LB 365, § 5; Laws 1981, LB 204, § 215; R.S.1943, (1981), § 84-306.09.

**81-1182 Conference expenses; payment; when.**

Any department, agency, commission, council, committee, or board of the state may pay conference expenses of persons who are not state employees if sufficient money is collected from such persons to cover the total expense incurred. No payment shall be made unless it is in accordance with the policies and procedures established by the Director of Administrative Services.

**Source:** Laws 1987, LB 539, § 1.

**81-1182.01 Volunteers and certain service providers; expenses; payment; when.**

Any department, agency, commission, council, committee, or board of the state may pay for the reasonable and necessary expenses for the recruitment, training, utilization, and recognition of volunteers providing services to the state and certain providers of services as established by the Director of Administrative Services. No payment shall be made unless it is in accordance with policies and procedures established by the Director of Administrative Services. For purposes of this section, volunteers and providers shall mean those persons performing services for the state under a state-recognized program as established by the Director of Administrative Services.

**Source:** Laws 1993, LB 448, § 1.

## (f) STATE GOVERNMENT RECYCLING MANAGEMENT ACT

**81-1183 Act, how cited.**

Sections 81-1183 to 81-1189 shall be known and may be cited as the State Government Recycling Management Act.

**Source:** Laws 1990, LB 987, § 1; R.S.Supp.,1990, § 81-1642.

**81-1184 Legislative intent.**

It is the intent of the State Government Recycling Management Act and the public policy of this state to recognize the importance of limited natural resources, to prevent waste, and to promote the most energy-saving and resource-saving use of state government recyclable material and the most efficient and economical method of recycling and disposing of such recyclable material.

**Source:** Laws 1986, LB 380, § 2; R.S.1943, (1987), § 81-1140.02; Laws 1990, LB 987, § 3; R.S.Supp.,1990, § 81-1643; Laws 2000, LB 654, § 37.

**81-1185 State government recyclable material, defined.**

For purposes of the State Government Recycling Management Act, state government recyclable material shall mean any product or material that has reached the end of its useful life, is obsolete, or is no longer needed by state government and for which there are readily available markets to take the material. State government recyclable material includes, but is not limited to, paper, paperboard, aluminum and other metals, yard waste, glass, tires, oil, and plastics.

**Source:** Laws 1986, LB 380, § 1; R.S.1943, (1987), § 81-1140.01; Laws 1990, LB 987, § 2; R.S.Supp.,1990, § 81-1644; Laws 2000, LB 654, § 38.

**81-1186 Department; duties.**

A program for the collection for recycling and sale of state government recyclable material shall be designed and implemented by the Department of Administrative Services in all state-operated buildings.

**Source:** Laws 1986, LB 380, § 3; R.S.1943, (1987), § 81-1140.03; Laws 1990, LB 987, § 4; R.S.Supp.,1990, § 81-1645; Laws 1992, LB 1257, § 97; Laws 2000, LB 654, § 39.

**81-1187 Disposition of state government recyclable material.**

The Department of Administrative Services shall obtain pricing information and shall contract to sell state government recyclable material for the best terms available in the marketplace. If the department is unable to locate a purchaser for such recyclable material or such sale would not be in the best economic interests of the state and the department is unable to locate a nonpaying contractee to recycle such recyclable material, the department shall make such other disposition of such recyclable material as is most practical and in the best interests of the state.

**Source:** Laws 1986, LB 380, § 4; R.S.1943, (1987), § 81-1140.04; Laws 1990, LB 987, § 5; R.S.Supp.,1990, § 81-1646; Laws 1992, LB 1257, § 98; Laws 2000, LB 654, § 40.

**81-1188 Resource Recovery Fund; created; use; investment.**

The Resource Recovery Fund is created. The fund shall be administered by the Department of Administrative Services. All proceeds from the program required by section 81-1186 and fifteen percent of all proceeds from the sale of surplus property sold to be remanufactured or reprocessed shall be deposited in the fund. The fund shall be used for the administration and implementation of the program, except that transfers from the fund to the General Fund may be made at the direction of the Legislature.

Any money in the Resource Recovery 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 two hundred fifty thousand dollars from the Resource Recovery Fund to the General Fund within fifteen days after July 1, 2002.

**Source:** Laws 1986, LB 380, § 5; R.S.1943, (1987), § 81-1140.05; Laws 1990, LB 987, § 6; Laws 1991, LB 429, § 1; R.S.Supp.,1991, § 81-1647; Laws 1992, LB 1257, § 99; Laws 1994, LB 1066, § 105; Laws 2002, LB 1310, § 19.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1189 Rules and regulations.**

The Department of Administrative Services may adopt and promulgate all rules and regulations necessary to carry out the State Government Recycling Management Act.

**Source:** Laws 1986, LB 380, § 6; R.S.1943, (1987), § 81-1140.06; Laws 1990, LB 987, § 7; R.S.Supp.,1990, § 81-1648; Laws 1992, LB 1257, § 100.

## (g) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

**81-1190 Transferred to section 86-501.**

**81-1191 Transferred to section 86-502.**

**81-1192 Transferred to section 86-525.**

**81-1193 Repealed. Laws 2000, LB 1349, § 14.**

**81-1194 Transferred to section 86-526.**

**81-1195 Transferred to section 86-527.**

**81-1196 Repealed. Laws 2000, LB 1349, § 14.**

**81-1196.01 Transferred to section 86-528.**

**81-1197 Repealed. Laws 2000, LB 1349, § 14.**

**81-1198 Repealed. Laws 2000, LB 1349, § 14.**

**81-1199 Transferred to section 86-529.**

**81-11,100 Repealed. Laws 2000, LB 1349, § 14.**

**81-11,101 Repealed. Laws 2000, LB 1349, § 14.**

**81-11,102 Transferred to section 86-530.**

**81-11,103 Repealed. Laws 2000, LB 1349, § 14.**

## (h) PERFORMANCE EVALUATION FOR CERTAIN ADMINISTRATIVE HEADS

**81-11,104 Performance evaluation process; department; duties; recommendations; cost.**

(1) The Department of Administrative Services shall establish an annual performance evaluation process for the administrative head of each state agency that is not created by the Constitution of Nebraska and that has an administrative head who is not appointed by the Governor and who has an annual base salary in excess of thirty thousand dollars. The first evaluation of an administrative head pursuant to this section shall not occur prior to the completion of one year of service by the administrative head. The results of the

evaluation shall be provided to the governing body which appoints the administrative head unless the evaluation is waived under subsection (3) of this section.

(2) The department shall establish and maintain a pool of individuals who are qualified to conduct performance evaluations of administrative heads and shall schedule annual performance evaluations for each administrative head who is subject to evaluation. The pool shall consist of not less than twenty qualified individuals. Each evaluation shall be conducted by a panel of not less than three and not more than five individuals as determined by the Director of Administrative Services and selected at random from the pool by the director or his or her designee. Each member of the panel shall be paid a daily or hourly fee set by the department at a level necessary to keep qualified individuals in the pool. The panel shall also be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The department shall provide staff support and model procedures and processes for the evaluations. After conducting an evaluation, the panel shall recommend one of the following to the governing body: (a) Retain; (b) no comments; (c) retain with qualifications; or (d) discharge. The rest of the evaluation shall be kept confidential, except that the governing body may discuss the evaluation with the panel in executive session and the administrative head may make any part of the evaluation results public. Evaluation work product and results shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05. Each agency shall pay for the cost of the annual performance evaluation of its administrative head. If a governing body conducts an annual performance evaluation of the administrative head using procedures which meet the approval of the department, the annual performance evaluation under this section may be waived by the director.

**Source:** Laws 1997, LB 314, § 1.

(i) NEBRASKA PUBLIC SAFETY COMMUNICATION  
SYSTEM REVOLVING FUND

**81-11,105 Nebraska Public Safety Communication System Revolving Fund; created; use; investment.**

The Nebraska Public Safety Communication System Revolving Fund is created. The fund shall be established within the Department of Administrative Services and administered by the Chief Information Officer. The fund shall consist of retainer-fee revenue received from state agencies accessing the Nebraska Public Safety Communication System, as authorized by the Legislature through the budget process. The fund shall only be used to pay for centralized direct costs of administering, operating, and maintaining the Nebraska Public Safety Communication System, including state-owned towers and network equipment. 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, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**STATE ADMINISTRATIVE DEPARTMENTS**

**ARTICLE 12**

**DEPARTMENT OF ECONOMIC DEVELOPMENT**

**(a) GENERAL PROVISIONS**

Section

- 81-1201. Repealed. Laws 1978, LB 568, § 23.
- 81-1201.01. Terms, defined.
- 81-1201.02. Department of Economic Development; created; purpose; duties.
- 81-1201.03. Director of Economic Development; appointment; duties; personnel.
- 81-1201.04. Repealed. Laws 2013, LB 78, § 23.
- 81-1201.05. Repealed. Laws 2013, LB 78, § 23.
- 81-1201.06. Repealed. Laws 2013, LB 78, § 23.
- 81-1201.07. Department; divisions and program; advisory committees and programs; authorized.
- 81-1201.08. Repealed. Laws 2010, LB 947, § 4.
- 81-1201.09. Department; develop and implement economic development strategies; considerations.
- 81-1201.10. Department; long-term strategy; performance review; duties; Performance Review Revolving Fund; created; use; investment.
- 81-1201.11. Department; lead agency; clearinghouse; staff services; coordination; status report; duties.
- 81-1201.12. Department; plans, contracts, funds; tax credit program; duties.
- 81-1201.13. Transferred to section 81-3713.
- 81-1201.14. Existing Business Assistance Division; duties.
- 81-1201.15. Business Recruitment Division; duties.
- 81-1201.16. Community and Rural Development Division; duties.
- 81-1201.17. Repealed. Laws 1989, LB 639, § 13.
- 81-1201.18. Department; administer Community Development Block Grant Program.
- 81-1201.19. Divisions; avoid duplication.
- 81-1201.20. Department; adopt rules and regulations.
- 81-1201.21. Job Training Cash Fund; created; use; investment.
- 81-1201.22. Administrative Cash Fund; created; use; investment.
- 81-1202. Job training grant, defined.
- 81-1203. Job training grant; business plan; project criteria; training grant; partners; training grants for rural areas or high-poverty areas; audit; report.
- 81-1204. Job training grant; approval; limitations.
- 81-1204.01. Training services; priority to community college areas.
- 81-1204.02. Repealed. Laws 1982, LB 592, § 2.
- 81-1205. Job training grant or training grant; reports required; department; duties.
- 81-1206. Job training grants; monitor and audit project.
- 81-1207. Job training grant; repayment required; when; training grant; repayment required; when.
- 81-1208. Job training grant; relocation, abandonment, or sale; effect.
- 81-1209. Job training grant; repayments; credit to fund.
- 81-1210. Job training grant; rules and regulations.
- 81-1210.01. Interns; grants; terms, defined.
- 81-1210.02. Interns; grants; internships; application; certification; department; powers and duties.
- 81-1210.03. Interns; grants; rules and regulations.
- 81-1211. Repealed. Laws 2011, LB 453, § 1.
- 81-1212. Lead-Based Paint Hazard Control Program; created; department; duties.
- 81-1213. Industrial Recovery Fund; created; administration; investment; use.
- 81-1213.01. High Growth Business Development Cash Fund; created; use; investment.

**(b) COMMISSION ON INDIAN AFFAIRS**

- 81-1214. Transferred to section 81-2501.
- 81-1215. Transferred to section 81-2502.

## DEPARTMENT OF ECONOMIC DEVELOPMENT

### Section

- 81-1216. Transferred to section 81-2503.
- 81-1217. Transferred to section 81-2504.
- 81-1217.01. Transferred to section 81-2505.
- 81-1218. Transferred to section 81-2506.
- 81-1219. Transferred to section 81-2507.
- 81-1219.01. Transferred to section 81-2508.

### (c) TOURIST PROMOTION STAMPS

- 81-1220. Repealed. Laws 1978, LB 568, § 23.
- 81-1221. Repealed. Laws 1978, LB 568, § 23.

### (d) PROPERTY CONTROLLED BY DEPARTMENT

- 81-1222. Repealed. Laws 1978, LB 568, § 23.
- 81-1222.01. Repealed. Laws 2011, LB 454, § 1.
- 81-1222.02. Director of Economic Development; fees; leases; collection; disposition.
- 81-1222.03. Repealed. Laws 2011, LB 454, § 1.
- 81-1223. Repealed. Laws 1978, LB 568, § 23.
- 81-1224. Repealed. Laws 1978, LB 568, § 23.
- 81-1225. Repealed. Laws 1978, LB 568, § 23.

### (e) DEPARTMENT OF ECONOMIC DEVELOPMENT; FUNCTIONS

- 81-1226. Repealed. Laws 1986, LB 965, § 26.
- 81-1227. Repealed. Laws 1986, LB 965, § 26.
- 81-1228. Repealed. Laws 1986, LB 965, § 26.
- 81-1229. Repealed. Laws 1986, LB 965, § 26.
- 81-1230. Repealed. Laws 1986, LB 965, § 26.
- 81-1231. Repealed. Laws 1986, LB 965, § 26.
- 81-1232. Repealed. Laws 1986, LB 965, § 26.
- 81-1233. Repealed. Laws 1986, LB 965, § 26.
- 81-1234. Repealed. Laws 1986, LB 965, § 26.
- 81-1235. Repealed. Laws 1986, LB 965, § 26.
- 81-1236. Repealed. Laws 1986, LB 965, § 26.
- 81-1237. Repealed. Laws 1986, LB 965, § 26.
- 81-1238. Repealed. Laws 1986, LB 965, § 26.
- 81-1239. Repealed. Laws 1986, LB 965, § 26.
- 81-1240. Repealed. Laws 1986, LB 965, § 26.
- 81-1241. Repealed. Laws 1986, LB 965, § 26.
- 81-1242. Repealed. Laws 1986, LB 965, § 26.
- 81-1243. Repealed. Laws 1986, LB 965, § 26.
- 81-1244. Repealed. Laws 1981, LB 545, § 52.

### (f) NEBRASKA VISITORS DEVELOPMENT ACT

- 81-1245. Transferred to section 81-3702.
- 81-1246. Transferred to section 81-3703.
- 81-1247. Transferred to section 81-3707.
- 81-1248. Transferred to section 81-3706.
- 81-1249. Transferred to section 81-3708.
- 81-1250. Transferred to section 81-3709.
- 81-1251. Transferred to section 81-3705.
- 81-1252. Transferred to section 81-3714.
- 81-1253. Transferred to section 81-3715.
- 81-1254. Transferred to section 81-3716.
- 81-1255. Transferred to section 81-3717.
- 81-1256. Transferred to section 81-3718.
- 81-1257. Transferred to section 81-3719.
- 81-1258. Transferred to section 81-3720.
- 81-1259. Transferred to section 81-3721.
- 81-1260. Transferred to section 81-3722.
- 81-1261. Transferred to section 81-3723.
- 81-1262. Transferred to section 81-3724.
- 81-1263. Transferred to section 81-3701.
- 81-1264. Repealed. Laws 1983, LB 114, § 1.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

#### (g) VENTURE CAPITAL NETWORK ACT

- 81-1265. Repealed. Laws 2011, LB 455, § 1.
- 81-1266. Repealed. Laws 2011, LB 455, § 1.
- 81-1267. Repealed. Laws 2011, LB 455, § 1.
- 81-1268. Repealed. Laws 2011, LB 455, § 1.
- 81-1269. Repealed. Laws 2011, LB 455, § 1.
- 81-1270. Repealed. Laws 2011, LB 455, § 1.
- 81-1271. Repealed. Laws 2011, LB 455, § 1.

#### (h) BUSINESS DEVELOPMENT PARTNERSHIP ACT

- 81-1272. Act, how cited.
- 81-1273. Legislative findings.
- 81-1274. Business Development Services Program; created; administration.
- 81-1275. Nebraska Business Development Center; duties.
- 81-1276. Existing Business Assistance Division; contracts; authorized.
- 81-1277. Existing Business Assistance Division; contracts; reports.

#### (i) AGRICULTURAL PRODUCTS RESEARCH

- 81-1278. Nebraska Agricultural Products Research Fund; created; investment.
- 81-1279. Fund; use.
- 81-1280. Fund; patents; powers of director; royalties.

#### (j) HOUSING AFFORDABILITY STRATEGY

- 81-1281. Comprehensive housing affordability strategy; established; contents; advisory committee; powers and duties.

#### (k) RURAL DEVELOPMENT

- 81-1282. Transferred to section 81-3601.
- 81-1283. Transferred to section 81-3602.
- 81-1284. Transferred to section 81-3603.
- 81-1285. Transferred to section 81-3604.
- 81-1286. Transferred to section 81-3605.
- 81-1287. Transferred to section 81-3606.

#### (l) PARTNERSHIPS FOR ECONOMIC DEVELOPMENT ACT

- 81-1288. Repealed. Laws 2002, LB 859, § 1.
- 81-1289. Repealed. Laws 2002, LB 859, § 1.
- 81-1290. Repealed. Laws 2002, LB 859, § 1.
- 81-1291. Repealed. Laws 2002, LB 859, § 1.
- 81-1292. Repealed. Laws 2002, LB 859, § 1.
- 81-1293. Repealed. Laws 2002, LB 859, § 1.
- 81-1294. Repealed. Laws 2002, LB 859, § 1.

#### (m) MICROENTERPRISE DEVELOPMENT ACT

- 81-1295. Repealed. Laws 2011, LB 387, § 18.
- 81-1296. Repealed. Laws 2011, LB 387, § 18.
- 81-1297. Repealed. Laws 2011, LB 387, § 18.
- 81-1298. Repealed. Laws 2011, LB 387, § 18.
- 81-1299. Repealed. Laws 2011, LB 387, § 18.
- 81-12,100. Repealed. Laws 2011, LB 387, § 18.
- 81-12,101. Repealed. Laws 2011, LB 387, § 18.
- 81-12,102. Repealed. Laws 2011, LB 387, § 18.
- 81-12,103. Repealed. Laws 2011, LB 387, § 18.
- 81-12,104. Repealed. Laws 2011, LB 387, § 18.
- 81-12,105. Repealed. Laws 2011, LB 387, § 18.
- 81-12,105.01. Repealed. Laws 2011, LB 387, § 18.

#### (n) NEBRASKA VENTURE CAPITAL FORUM ACT

- 81-12,106. Repealed. Laws 2009, LB 3, § 1.
- 81-12,107. Repealed. Laws 2009, LB 3, § 1.
- 81-12,108. Repealed. Laws 2009, LB 3, § 1.
- 81-12,109. Repealed. Laws 2009, LB 3, § 1.

## DEPARTMENT OF ECONOMIC DEVELOPMENT

### Section

- 81-12,110. Repealed. Laws 2009, LB 3, § 1.
- 81-12,111. Repealed. Laws 2009, LB 3, § 1.
- 81-12,112. Repealed. Laws 2009, LB 3, § 1.
- 81-12,113. Repealed. Laws 2009, LB 3, § 1.
- 81-12,114. Repealed. Laws 2009, LB 3, § 1.
- 81-12,115. Repealed. Laws 2009, LB 3, § 1.
- 81-12,116. Repealed. Laws 2009, LB 3, § 1.

#### (o) NEBRASKA OPPORTUNITY ZONE ACT

- 81-12,117. Act, how cited.
- 81-12,118. Legislative findings and declarations.
- 81-12,119. Opportunity zone commission; powers and duties.
- 81-12,120. Opportunity zone; commission; duties.
- 81-12,121. Opportunity zone commission; administrative powers.
- 81-12,122. Repealed. Laws 2012, LB 782, § 253.
- 81-12,123. Nebraska Innovation Zone Commission; created; members; meetings; quorum; expenses; duties.
- 81-12,124. Act; termination.

#### (p) BUILDING ENTREPRENEURIAL COMMUNITIES ACT

- 81-12,125. Repealed. Laws 2011, LB 387, § 18.
- 81-12,126. Repealed. Laws 2011, LB 387, § 18.
- 81-12,127. Repealed. Laws 2011, LB 387, § 18.
- 81-12,128. Repealed. Laws 2011, LB 387, § 18.

#### (q) NEBRASKA OPERATIONAL ASSISTANCE ACT

- 81-12,129. Act, how cited.
- 81-12,130. Legislative findings.
- 81-12,131. Terms, defined.
- 81-12,132. Purpose of act.
- 81-12,133. Nebraska Operational Assistance Program; established; department select organization to carry out act; considerations.
- 81-12,134. Appropriation of funds; grant; funding; matching funds.
- 81-12,135. Information regarding activities; department; report.

#### (r) SMALL BUSINESS INNOVATION ACT

- 81-12,136. Act, how cited.
- 81-12,137. Legislative intent.
- 81-12,138. Terms, defined.
- 81-12,139. Department; contract authorized.
- 81-12,140. Pilot program; established.
- 81-12,141. Legislative intent for appropriations.
- 81-12,142. Report; contents.
- 81-12,143. Act; termination.

#### (s) SITE AND BUILDING DEVELOPMENT ACT

- 81-12,144. Act, how cited.
- 81-12,145. Legislative findings.
- 81-12,146. Site and Building Development Fund; created; funding.
- 81-12,147. Site and Building Development Fund; use; eligible activities.
- 81-12,148. Entities eligible to receive assistance; matching funds.
- 81-12,149. Department; allocate funds; qualified action plan; contents; powers of department.
- 81-12,150. Rules and regulations.
- 81-12,151. Annual report.

#### (t) BUSINESS INNOVATION ACT

- 81-12,152. Act, how cited.
- 81-12,153. Terms, defined.
- 81-12,154. Purpose of act.
- 81-12,155. Qualified action plan; department; duties; contents.
- 81-12,156. Funding; use; preference.

## Section

81-12,157.	Planning grants; phase one program; limitations.
81-12,158.	Financial assistance program to create prototype of certain products; established; funds; match required; limitation.
81-12,159.	Innovation in value-added agriculture program; established; purpose; eligibility; match required; limitation.
81-12,160.	Financial assistance program to commercialize product or process; established; purpose; funds; match required; limitation.
81-12,161.	Financial assistance program relating to college or university research and development; established; funds; match required; limitation.
81-12,162.	Small business investment program; established; award; criteria; considerations; funds; match required; department; contracts authorized; limitation.
81-12,163.	Appropriations; legislative intent.
81-12,164.	Rules and regulations.
81-12,165.	Department; contract authorized.
81-12,166.	Report; contents.
81-12,167.	Act; termination.

## (a) GENERAL PROVISIONS

**81-1201 Repealed. Laws 1978, LB 568, § 23.****81-1201.01 Terms, defined.**

As used in sections 81-1201.01 to 81-1201.22, unless the context otherwise requires:

(1) Community Development Block Grant means the grants distributed pursuant to the Housing and Community Development Act of 1974 as amended by the Housing and Urban-Rural Recovery Act of 1983;

(2) Department means the Department of Economic Development;

(3) Director means the Director of Economic Development;

(4) Economic articulation means the creation of economic activities which will provide inputs to and markets for other businesses in the state;

(5) Educational institutions means nonprofit public and private colleges, community colleges, state colleges, and universities in the state; and

(6) Value-adding industry means an economic enterprise that adds value through processing, fabrication, or other means to goods or services.

**Source:** Laws 1986, LB 965, § 1; Laws 1994, LB 1194, § 18; Laws 2013, LB78, § 10.

**81-1201.02 Department of Economic Development; created; purpose; duties.**

There is hereby created an executive department of state government to be known as the Department of Economic Development. The purpose of the department is to maintain and develop the economy of the state to provide opportunities for the people which will enhance and expand the quality of their lives. The department shall promote the:

(1) Expansion of personal income through the development of business and employment opportunities which afford sufficient compensation to ensure an adequate standard of living for the people of the state;

(2) Development of an economy that contributes to and enhances the environmental quality of the state;

(3) Development of a stable economy within the state;

(4) Development of economic health and opportunities throughout the communities and counties of the state;

(5) Development of an economy which is capable of providing the necessary revenue for state government, local governments, and other political subdivisions of the state and in this way minimize the tax burden faced by all taxpayers of the state; and

(6) Structuring of the department and its staff as a nonpolitical, professionally managed division of state government.

**Source:** Laws 1986, LB 965, § 2; Laws 2013, LB78, § 11.

**81-1201.03 Director of Economic Development; appointment; duties; personnel.**

The chief executive officer of the department shall be the Director of Economic Development who shall be appointed by the Governor with the consent of a majority of the Legislature. The director shall administer the affairs of the department and shall serve at the pleasure of the Governor. The director shall have equal rank with the heads of other state departments, and his or her salary shall be fixed by the Governor. The director shall employ a deputy director with significant and extensive professional experience in the field of economic development. The director shall employ division directors and such other assistants, professional staff, and other employees as he or she deems necessary to effectively carry out sections 81-1201.01 to 81-1201.20 within the appropriations the Legislature provides.

**Source:** Laws 1986, LB 965, § 3; Laws 2013, LB78, § 12.

**81-1201.04 Repealed. Laws 2013, LB 78, § 23.**

**81-1201.05 Repealed. Laws 2013, LB 78, § 23.**

**81-1201.06 Repealed. Laws 2013, LB 78, § 23.**

**81-1201.07 Department; divisions and program; advisory committees and programs; authorized.**

The department may have the divisions and program listed in this section to aid in the discharge of its duties but shall not be limited to such divisions and program: (1) An Existing Business Assistance Division; (2) a Business Recruitment Division; (3) a Community and Rural Development Division; and (4) a Community Development Block Grant Program. Each division and program, when deemed appropriate by the director, is encouraged to establish advisory committees and programs to insure public participation and input.

**Source:** Laws 1986, LB 965, § 7; Laws 1989, LB 639, § 1; Laws 1993, LB 190, § 7; Laws 1998, LB 1053, § 10; Laws 2012, LB1053, § 27.

**81-1201.08 Repealed. Laws 2010, LB 947, § 4.**

**81-1201.09 Department; develop and implement economic development strategies; considerations.**

The department shall develop and implement economic development strategies to:

(1) Facilitate the maintenance and expansion of existing enterprises and the creation of new value-adding industries, including those involved in selling to non-Nebraska markets;

(2) Promote economic articulation within the economy of the state;

(3) Promote productivity among value-adding industries;

(4) Promote economic diversification within the economy of the state; and

(5) Maintain and revitalize economically distressed areas.

In developing these strategies the department shall consider the special economic needs of women and minorities and pursue policies which are consistent with Nebraska policies to protect and enhance the environmental quality of the state.

**Source:** Laws 1986, LB 965, § 9.

**81-1201.10 Department; long-term strategy; performance review; duties; Performance Review Revolving Fund; created; use; investment.**

The department shall:

(1) Create and keep current a comprehensive and long-term strategy for economic development. The strategy shall address and be consistent with the general purposes and duties of the department. The strategy shall consider: (a) The entire state; (b) economic regions within the state; and (c) the operating divisions and program listed in section 81-1201.07; and

(2) Develop an independent program of performance review of the activities of the department, departmental divisions, and the Community Development Block Grant Program. The review shall include, but not be limited to: (a) An assessment of the impact of the department's programs corresponding to the strategic plans of the department, departmental divisions, and the Community Development Block Grant Program; (b) a comparative assessment of the relative impact of the department's programs with similar programs in other states; and (c) a comparative assessment of the department's programs' impact on different parts of the state. The review shall be completed or updated at least once every three years.

The Performance Review Revolving Fund is created. The money in the fund shall be used to employ an independent firm experienced in doing performance reviews as prescribed in this section to do performance reviews. 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 965, § 10; Laws 1989, LB 639, § 3; Laws 1993, LB 190, § 8; Laws 1994, LB 1066, § 106; Laws 1998, LB 1053, § 11.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1201.11 Department; lead agency; clearinghouse; staff services; coordination; status report; duties.**

The department shall:

(1) Serve as the lead state agency in the area of economic development. The department shall develop a program to promote coordination and cooperation within state government and with institutions of higher education, local governments, other political subdivisions of the state, and the private sector;

(2) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to the full development of the state's economy, which may be relevant with regard to the possibilities of future development in Nebraska, and which will be of use to local governments, the Governor, other state agencies, and the Legislature in discharging their responsibilities. The department shall develop a program to ensure cooperation between state agencies, the University of Nebraska, and other entities with related economic information;

(3) Provide staff services when, in the opinion of the director, such services are necessary and appropriate in the areas of economic development to cities of the first class, cities of the second class, and villages on a contractual basis when the terms of such contracts can be mutually accepted;

(4) Assist the Governor in coordinating the efforts of local governments to develop mutual and cooperative solutions to their common problems; and

(5) Prepare annually a status report on the activities and impacts of the department and its programs. The status report shall include information detailing the status of all programs administered by the department for which the Legislature requires reporting. The status report shall be submitted to the Governor and the Legislature on the first working day of July of each year. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 1986, LB 965, § 11; Laws 2011, LB404, § 4; Laws 2012, LB782, § 192.

#### **81-1201.12 Department; plans, contracts, funds; tax credit program; duties.**

The department shall:

(1) Submit and adopt all necessary plans, enter into contracts, and accept gifts, grants, and federal funds; and

(2) Administer the tax credit program established by the Community Development Assistance Act and adopt and promulgate rules and regulations pursuant to such act.

**Source:** Laws 1986, LB 965, § 12.

#### **Cross References**

**Community Development Assistance Act**, see section 13-201.

#### **81-1201.13 Transferred to section 81-3713.**

#### **81-1201.14 Existing Business Assistance Division; duties.**

The primary responsibility of the Existing Business Assistance Division shall be to provide assistance to instate businesses. Such assistance shall encourage the startup of new businesses and the retention and expansion of existing businesses. Emphasis shall be placed upon meeting the unique needs of small businesses in the state. Activities of the division shall include, but not be limited to, financial packaging, technical assistance, contacts with existing businesses regarding needs, work force development, job training assistance, export tech-

nical assistance, and assistance to businesses in accessing new markets and new technologies.

The division shall avoid duplication with existing programs already in place which assist small businesses and entrepreneurs, and the department and the division shall deliver their programs through, to the extent possible, the Nebraska Business Development Center, the University of Nebraska-Lincoln Food Processing Center, the Nebraska Investment Finance Authority, the Small Business Administration of the federal government, and other related organizations.

**Source:** Laws 1986, LB 965, § 14; Laws 1987, LB 736, § 7; Laws 1989, LB 639, § 4; Laws 1997, LB 659, § 1; Laws 2007, LB388, § 3.

**Cross References**

**Business Development Partnership Act**, see section 81-1272.

**Nebraska Investment Finance Authority Act**, see section 58-201.

**81-1201.15 Business Recruitment Division; duties.**

The primary responsibility of the Business Recruitment Division shall be the creation of jobs through the attraction of business to the state. The division shall develop a program of assistance to local governments, chambers of commerce, development organizations, and other entities involved in attracting new value-adding industries. Activities shall include, but not be limited to, industrial recruitment, marketing, international investment attraction, and technical assistance to community organizations in their recruitment efforts.

**Source:** Laws 1986, LB 965, § 15; Laws 1989, LB 639, § 5.

**81-1201.16 Community and Rural Development Division; duties.**

The Community and Rural Development Division shall provide technical and financial assistance to communities for the preparation of community-based community needs assessment and development strategies. The division shall develop a program to assist communities in finding solutions to the problems identified within the community needs assessment.

**Source:** Laws 1986, LB 965, § 16; Laws 1989, LB 639, § 6.

**81-1201.17 Repealed. Laws 1989, LB 639, § 13.**

**81-1201.18 Department; administer Community Development Block Grant Program.**

(1) The department shall administer the Community Development Block Grant Program. In addition to the performance review requirements in section 81-1201.10, the department shall develop an ongoing program of monitoring the impact of grants on the communities receiving the grants. The monitoring program shall include, but not be limited to, the following information: (a) The status of the project for which such grant was awarded; (b) the grant amount; (c) the local government contribution; (d) the private financial contribution; (e) the goals and objectives of the grant; and (f) the impact of the grant relative to the goals and objectives of the grant.

(2) The department shall determine community development objectives, state priorities, and guidelines for the distribution of funds for community development projects within the Community Development Block Grant Program,

which shall conform to the objectives as set forth in the Housing and Community Development Act of 1974, as amended, and which shall:

(a) Include statistical community need factors; and

(b) Require that grant applicants submit evidence of a community assessment process for the project, which assessment process the department shall design.

(3) To the extent possible, the Community Development Block Grant funds shall be allocated on a need and competitive basis.

**Source:** Laws 1986, LB 965, § 18; Laws 1989, LB 639, § 7; Laws 2010, LB947, § 2; Laws 2013, LB78, § 13.

#### **81-1201.19 Divisions; avoid duplication.**

The divisions shall avoid the duplication of existing programs or services and, to the extent possible, shall use existing programs and organizations to implement the program and objectives of the division.

**Source:** Laws 1986, LB 965, § 19.

#### **81-1201.20 Department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out sections 81-1201.01 to 81-1201.20.

**Source:** Laws 1986, LB 965, § 20.

#### **81-1201.21 Job Training Cash Fund; created; use; investment.**

(1) There is hereby created the Job Training Cash Fund. The fund shall be under the direction of the Department of Economic Development. Money may be transferred to the fund pursuant to subdivision (1)(b)(iii) of section 48-621 and from the Cash Reserve Fund at the direction of the Legislature. The department shall establish a subaccount for all money transferred from the Cash Reserve Fund to the Job Training Cash Fund on or after July 1, 2005.

(2) The department shall use the Job Training Cash Fund or the subaccount established in subsection (1) of this section (a) to provide reimbursements for job training activities, including employee assessment, preemployment training, on-the-job training, training equipment costs, and other reasonable costs related to helping industry and business locate or expand in Nebraska, (b) to provide upgrade skills training of the existing labor force necessary to adapt to new technology or the introduction of new product lines, or (c) to provide grants pursuant to section 81-1210.02. The department shall give a preference to job training activities carried out in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act.

(3) The department shall establish a subaccount within the fund to provide training grants for training employees and potential employees of businesses that (a) employ twenty-five or fewer employees on the application date, (b) employ, or train for potential employment, residents of rural areas of Nebraska, or (c) are located in or employ, or train for potential employment, residents of high-poverty areas as defined in section 81-1203. The department shall calculate the amount of prior year investment income earnings accruing to the fund and allocate such amount to the subaccount for training grants under this subsection. The subaccount shall also be used as provided in the Teleworker Job Creation Act and as provided in section 81-1210.02. The department shall

give a preference to training grants for businesses located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act.

(4) 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, § 3; Laws 1994, LB 1066, § 107; Laws 1995, LB 1, § 15; Laws 2000, LB 953, § 11; Laws 2005, LB 427, § 1; Laws 2007, LB322, § 27; Laws 2008, LB956, § 1; Laws 2009, LB316, § 22; Laws 2009, First Spec. Sess., LB3, § 72; Laws 2010, LB961, § 1; Laws 2010, LB1081, § 12; Laws 2011, LB386, § 4; Laws 2012, LB946, § 11; Laws 2013, LB476, § 1; Laws 2014, LB800, § 6.

Effective date July 18, 2014.

#### Cross References

**Enterprise Zone Act**, see section 13-2101.01.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**Teleworker Job Creation Act**, see section 48-3001.

#### **81-1201.22 Administrative Cash Fund; created; use; investment.**

(1) There is hereby created the Administrative Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) Fees charged for the sale of department publications or subscription to publications;

(b) Fees charged for the sale of Nebraska items promoting economic development of the state;

(c) Deposits charged for the temporary use of Nebraska items promoting economic development of the state;

(d) Fees charged for attendance and participation in department-sponsored conferences, training sessions, and other special events;

(e) Money collected from nondepartment sources in connection with cooperative funding of advertising, marketing, promotional, or consulting activities; and

(f) Money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used by the department for carrying out the provisions of Chapter 81, article 12.

(2) Revenue from the fund may be expended for the following purposes:

(a) Production and distribution costs of department publications;

(b) Purchase of items promoting economic development of the state intended for sale;

(c) Reimbursement of deposits collected for the temporary use of promotional items;

(d) Payment of costs in connection with department-sponsored conferences, training sessions, and other special events;

(e) Payment of costs of advertising, marketing, promotional, or consulting activities in cooperative funding partnerships with nondepartment organizations; and

(f) Payment of costs for which fund revenue has been received and which are related to department activities in Chapter 81, article 12.

(3) Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Administrative 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 1994, LB 1194, § 19; Laws 1995, LB 7, § 122; Laws 2009, First Spec. Sess., LB3, § 73; Laws 2012, LB1053, § 28.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1202 Job training grant, defined.**

For purposes of sections 81-1202 to 81-1210, job training grant means a grant from the Job Training Cash Fund or any nonfederal funding source within the Department of Economic Development awarded by the department.

**Source:** Laws 1995, LB 326, § 1; Laws 2008, LB956, § 2.

**81-1203 Job training grant; business plan; project criteria; training grant; partners; training grants for rural areas or high-poverty areas; audit; report.**

(1) A business applying for a job training grant, other than a grant provided under subsection (3) of section 81-1201.21, shall submit a business plan to the Department of Economic Development which includes, but is not limited to:

(a) The number of jobs to be created or the number of existing positions that will be retrained;

(b) The nature of the business and the type of jobs to be created or positions to be retrained;

(c) The estimated wage levels of the jobs to be created or positions to be retrained; and

(d) A program schedule for the job training project.

(2) A business applying for a job training grant, other than a grant provided under subsection (3) of section 81-1201.21, must demonstrate that the job training project to be conducted pursuant to the grant meets the following criteria:

(a) The wage level of the jobs created will meet the local prevailing average;

(b) The jobs created will diversify the local economy;

(c) The goods or services produced by the company will be export-oriented;

(d) Seventy-five percent of the jobs created will be full-time jobs; and

(e) The new jobs will be created within three calendar years.

(3) A business applying for a training grant under subsection (3) of section 81-1201.21 may partner with a postsecondary educational institution; a private, nonprofit organization holding a certificate of exemption under section 501(c)(3) of the Internal Revenue Code; or a learning community coordinating council or school district that has partnered with a private, nonprofit organization. The application shall specify the role of the partnering entity in identifying and training potential job applicants for the applicant business.

(4) A business applying for a training grant under subsection (3) of section 81-1201.21 may apply as a business that has established a program under which residents of rural areas or high-poverty areas are trained for employment or potential employment by documenting:

(a) That the business has established a program designed to fill a minimum of four positions in rural areas and a minimum of eight positions in high-poverty areas for such business;

(b) A program schedule for the training project;

(c) The nature of the business and the number of positions available or to be created;

(d) That the wage level of the positions available or to be created will meet the local prevailing average;

(e) The value of the positions available or to be created in diversifying the local economy;

(f) That a minimum of seventy-five percent of the positions available or to be created will be full-time jobs;

(g) That the business will accept funding on behalf of trainees and will provide a match of a minimum of twenty-five percent of the value of the grant, either monetarily or through in-kind services, as part of the training for each trainee;

(h) That any new position created will be done within three calendar years;

(i) That the number of trainees will not exceed one hundred twenty-five percent of the number of positions that will be available at the time of application; and

(j) That the goods or services produced by the business are generally exportable in nature resulting in additional money to the community or the state and the positions available or to be created are not local retail positions.

(5) Each business participating in a training grant under subsection (3) of section 81-1201.21 shall be subject to an audit by the Department of Economic Development and shall annually report or provide to the department the following information:

(a) The percentage of trainees who have successfully completed the training;

(b) The percentage of trainees that such business hired;

(c) An itemized description of such business's match including expenditures per trainee; and

(d) A copy of the training curriculum.

(6) For purposes of subsections (3) through (5) of this section:

(a) High-poverty area means an area consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons with incomes below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census; and

(b) Private, nonprofit organization means an organization whose purpose is providing basic job and life skills training to individuals in need of such training in rural or high-poverty areas.

**Source:** Laws 1995, LB 326, § 2; Laws 2008, LB1154, § 27; Laws 2010, LB961, § 2.

**81-1204 Job training grant; approval; limitations.**

(1) Except as otherwise provided in subsection (2) of this section, the Department of Economic Development shall not approve a job training grant (a) which exceeds an average expenditure of five thousand dollars per job created if the proposed wage levels do not exceed thirty thousand dollars per year, (b) which exceeds an average expenditure of ten thousand dollars per job if the proposed wage levels exceed thirty thousand dollars per year but do not exceed fifty thousand dollars per year, or (c) which exceeds an average expenditure of twenty thousand dollars per job if the proposed wage levels exceed fifty thousand dollars per year or if the jobs created are located in a high-poverty area as defined in section 81-1203.

(2) If the application is approved with provisions described in subsection (3) of section 81-1203, the Department of Economic Development may approve a job training grant (a) up to ten thousand dollars per job created if the proposed wage levels do not exceed thirty thousand dollars per year, (b) up to fifteen thousand dollars per job if the proposed wage levels exceed thirty thousand dollars per year but do not exceed fifty thousand dollars per year, or (c) up to twenty-five thousand dollars per job if the proposed wage levels exceed fifty thousand dollars per year or if the jobs created are located in a high-poverty area as defined in section 81-1203.

**Source:** Laws 1995, LB 326, § 3; Laws 2008, LB1154, § 28; Laws 2014, LB906, § 19.  
Effective date March 30, 2014.

**81-1204.01 Training services; priority to community college areas.**

Whenever practicable, the Department of Economic Development shall give priority consideration to training services offered by community college areas.

**Source:** Laws 2008, LB956, § 3.

**81-1204.02 Repealed. Laws 1982, LB 592, § 2.****81-1205 Job training grant or training grant; reports required; department; duties.**

A business which is awarded a job training grant or a training grant shall provide annual performance reports to the Department of Economic Development and a final performance report upon the completion of the project. The department shall provide a status report to the Appropriations Committee of the Legislature on July 1 of each year. The status report shall include information on each active grant, including specific information regarding the number of positions to be trained, whether new or existing employees are to be trained, the length of time that the project has been active, the amount of funding committed to the project, the amount of funding paid out to date, and the projected completion date. The status report shall also provide information on grants closed during the reporting year, including the total number of employees trained, whether new or existing employees were trained, total project expenditures, and the duration time of the project. The status report shall also provide information summarizing the use of community college areas to provide training services and list specific projects where a community college area is providing all or a component of the training services. If private or inhouse training services are used, the status report shall provide information regarding

the name of the private or inhouse training service and the qualifications of the training service. The report submitted to the Appropriations Committee shall be submitted electronically.

**Source:** Laws 1995, LB 326, § 4; Laws 2008, LB956, § 4; Laws 2010, LB961, § 3; Laws 2011, LB404, § 5; Laws 2014, LB906, § 20. Effective date March 30, 2014.

**81-1206 Job training grants; monitor and audit project.**

The Department of Economic Development shall monitor the progress of job training projects conducted pursuant to job training grants. As deemed necessary, the department may conduct a site audit of job training projects and review business records pertaining to the job training project.

**Source:** Laws 1995, LB 326, § 5.

**81-1207 Job training grant; repayment required; when; training grant; repayment required; when.**

(1) If a business which receives a job training grant creates fewer jobs than stated in the business plan, the business shall repay the job training grant as provided in this subsection. If less than fifty percent of the proposed jobs are created, one hundred percent of the grant shall be repaid. If fifty percent or more but less than seventy percent of the proposed jobs are created, fifty percent of the grant shall be repaid. If seventy percent or more but less than ninety percent of the proposed jobs are created, twenty-five percent of the grant shall be repaid. If ninety percent or more of the proposed jobs are created, no repayment is required.

(2) If a business receives a training grant and fewer trainees than stated in the business plan complete the training, the business shall repay the grant as provided in this subsection. For every trainee who does not complete the training, the business shall repay fifty percent of the prorated share of such trainee's uncompleted training costs.

**Source:** Laws 1995, LB 326, § 6; Laws 2010, LB961, § 4.

**81-1208 Job training grant; relocation, abandonment, or sale; effect.**

If a business relocates or abandons its site during the grant disbursement period, the disbursements made to the business shall be immediately due and payable to the Department of Economic Development. If a business is sold during the grant disbursement period, the disbursements made to the business shall be immediately due and payable to the department unless the purchaser agrees to carry out the terms and conditions of the business plan.

**Source:** Laws 1995, LB 326, § 7.

**81-1209 Job training grant; repayments; credit to fund.**

The Department of Economic Development shall remit repayments of job training grants due to noncompliance to the State Treasurer for credit to the Job Training Cash Fund.

**Source:** Laws 1995, LB 326, § 8.

**81-1210 Job training grant; rules and regulations.**

The Department of Economic Development shall adopt and promulgate rules and regulations to govern the award and disbursement of job training grants.

**Source:** Laws 1995, LB 326, § 9.

**81-1210.01 Interns; grants; terms, defined.**

For purposes of sections 81-1210.01 to 81-1210.03:

(1) Department means the Department of Economic Development;

(2) Internship means employment of a student in a professional or technical position for a limited period of time, by a business in Nebraska, in which the student (a) gains valuable work experience, (b) increases knowledge that assists with career decisionmaking, and (c) assists the business in accelerating short-term business objectives; and

(3) Student means any person who:

(a) Is enrolled full-time in a college, university, or other institution of higher education in Nebraska;

(b) Has residency in Nebraska and is enrolled full-time in a college, university, or other institution of higher education in a state other than Nebraska; or

(c) Applies for an internship within six months following graduation from (i) a college, university, or other institution of higher education in Nebraska or (ii) a college, university, or other institution of higher education in a state other than Nebraska if such person had residency in Nebraska during his or her enrollment in such college, university, or institution.

**Source:** Laws 2011, LB386, § 1; Laws 2013, LB476, § 2.

**81-1210.02 Interns; grants; internships; application; certification; department; powers and duties.**

(1) The intent of sections 81-1210.01 to 81-1210.03 is to provide students with valuable internship opportunities in order to retain such students and attract workers to Nebraska by assisting Nebraska businesses willing to provide paid internships.

(2) A business may apply to the department for a grant to assist in providing a student an internship if:

(a) The business certifies that the internship meets the definition of internship in section 81-1210.01;

(b) The business will pay the student at least the federal minimum hourly wage for the internship;

(c) The internship will be completed within the State of Nebraska;

(d) The internship will be completed within a period of no more than twelve months; and

(e) The internship will be for a duration sufficient to allow the student to gain significant valuable work experience and knowledge.

(3) The department may provide grants for internships in the following amounts:

(a) If the student receiving the internship is a Federal Pell Grant recipient at the time of grant application, the grant may be up to the lesser of seventy-five percent of the cost of the internship or seven thousand five hundred dollars.

The business applying for the grant shall provide the department with documentation to prove that the student is a Federal Pell Grant recipient; and

(b) For all other students, the grant may be up to the lesser of seventy-five percent of the cost of the internship or five thousand dollars.

(4) A business may apply for no more than two grants for the same student, shall not be awarded more than five grants at any one location in any twelve-month period, and shall not be awarded more than ten grants total in any twelve-month period.

(5) A business may allow a student to telecommute if the business is located more than thirty miles from the college, university, or other institution of higher education in which the student is enrolled and if the college, university, or other institution of higher education is in Nebraska.

(6) The department shall, to the extent possible, assure that the distribution of grants under sections 81-1210.01 to 81-1210.03 provides equitable access to the grants by all geographic areas of the state.

(7) The department shall, to the extent possible, assure that the grants awarded pursuant to sections 81-1210.01 to 81-1210.03 are for internships which provide valuable learning opportunities for students who will be seeking employment in a professional or technical field.

(8) The department shall not allocate more than one million five hundred thousand dollars in any one fiscal year from the Job Training Cash Fund or its subaccounts for purposes of this section. The department may receive funds from public, private, or other sources for purposes of this section.

(9) The department shall develop a qualified action plan by January 1 of each even-numbered year. The plan shall, at a minimum, set forth the department's priorities and selection criteria for awarding grants for internships. In order to encourage students from across Nebraska to pursue internships, the plan shall also include strategies for affirmatively marketing internships to Nebraska students in high schools, colleges, universities, and other institutions of higher education in Nebraska. Such strategies shall place an emphasis on marketing to underserved student populations as defined by the department in the plan. The department shall submit the plan to the Governor for approval.

**Source:** Laws 2011, LB386, § 2; Laws 2013, LB476, § 3.

### **81-1210.03 Interns; grants; rules and regulations.**

The department may adopt and promulgate rules and regulations to govern the award and disbursement of grants pursuant to sections 81-1210.01 to 81-1210.03.

**Source:** Laws 2011, LB386, § 3; Laws 2013, LB476, § 4.

### **81-1211 Repealed. Laws 2011, LB 453, § 1.**

### **81-1212 Lead-Based Paint Hazard Control Program; created; department; duties.**

(1) The Lead-Based Paint Hazard Control Program is created. The Department of Economic Development shall award a grant to a city of the metropolitan class in the amount of two hundred thousand dollars, contingent upon formal notification by the United States Department of Housing and Urban Development that it intends to award a grant to a city of the metropolitan class

to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X, Section 1011, Public Law 102-550, as such act existed on July 15, 2010.

(2) It is the intent of the Legislature to provide a one-time appropriation for the Lead-Based Paint Hazard Control Program with lapsed funding from the Legislative Council from the Nebraska Health Care Cash Fund.

(3) This section terminates on June 30, 2011.

**Source:** Laws 2010, LB987, § 1.

Termination date June 30, 2011.

**81-1213 Industrial Recovery Fund; created; administration; investment; use.**

(1) The Industrial Recovery Fund is created. The fund shall be administered by the Department of Economic 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.

(2) The department may provide assistance from the fund to a political subdivision impacted by a sudden and significant private-sector entity closure or downsizing that will have a significant impact on the community. The assistance shall be used to mitigate the economic impact of the closure or downsizing by making necessary improvements to the buildings and infrastructure, or both, related to the assets of the private-sector entity.

(3) The fund shall consist of funds remitted for deposit in the fund pursuant to section 58-708. If the fund balance exceeds one million dollars, deposits to the fund pursuant to such section shall cease until the fund balance is less than one million dollars.

**Source:** Laws 2011, LB388, § 9.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1213.01 High Growth Business Development Cash Fund; created; use; investment.**

(1) The High Growth Business Development Cash Fund is created. The fund shall be administered by the Department of Economic Development to fund a study related to high growth business development. The fund shall consist of money appropriated or transferred by the Legislature and gifts, grants, or bequests from any source, including money remitted to the fund from any other federal, state, public, and private sources. 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) It is the intent of the Legislature that fifty thousand dollars of General Funds be appropriated to the High Growth Business Development Cash Fund for the department to contract with the private, nonprofit organization selected pursuant to subsection (3) of section 81-12,133 to provide research, analysis of best practices in other states, and make recommendations on ways to support and increase venture capital in Nebraska. A report of the findings of the research and analysis and recommendations shall be presented to the Clerk of the Legislature no later than December 1, 2014. The report shall be submitted electronically.

(3) On August 1, 2014, the State Treasurer shall transfer fifty thousand dollars from the General Fund to the High Growth Business Development Cash Fund.

**Source:** Laws 2014, LB1114, § 4.  
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(b) COMMISSION ON INDIAN AFFAIRS

**81-1214 Transferred to section 81-2501.**

**81-1215 Transferred to section 81-2502.**

**81-1216 Transferred to section 81-2503.**

**81-1217 Transferred to section 81-2504.**

**81-1217.01 Transferred to section 81-2505.**

**81-1218 Transferred to section 81-2506.**

**81-1219 Transferred to section 81-2507.**

**81-1219.01 Transferred to section 81-2508.**

(c) TOURIST PROMOTION STAMPS

**81-1220 Repealed. Laws 1978, LB 568, § 23.**

**81-1221 Repealed. Laws 1978, LB 568, § 23.**

(d) PROPERTY CONTROLLED BY DEPARTMENT

**81-1222 Repealed. Laws 1978, LB 568, § 23.**

**81-1222.01 Repealed. Laws 2011, LB 454, § 1.**

**81-1222.02 Director of Economic Development; fees; leases; collection; disposition.**

(1) The Director of Economic Development is hereby authorized to set and collect a fee from persons who attend any attraction under the control or supervision of the Department of Economic Development. All such funds shall be deposited in the appropriate department fund and used for the purposes set forth for that fund.

(2) The Director of Economic Development may contract for and lease any property under the control and supervision of the Department of Economic Development to any person or organization if such lease is in the best interest of the state. All funds collected from such leases shall be deposited in the appropriate department fund and used for the purposes set forth for that fund.

**Source:** Laws 1978, LB 568, § 22.

**81-1222.03 Repealed. Laws 2011, LB 454, § 1.**

**81-1223 Repealed. Laws 1978, LB 568, § 23.**

**81-1224 Repealed. Laws 1978, LB 568, § 23.**

**81-1225 Repealed. Laws 1978, LB 568, § 23.**

(e) DEPARTMENT OF ECONOMIC DEVELOPMENT; FUNCTIONS

**81-1226 Repealed. Laws 1986, LB 965, § 26.**

**81-1227 Repealed. Laws 1986, LB 965, § 26.**

**81-1228 Repealed. Laws 1986, LB 965, § 26.**

**81-1229 Repealed. Laws 1986, LB 965, § 26.**

**81-1230 Repealed. Laws 1986, LB 965, § 26.**

**81-1231 Repealed. Laws 1986, LB 965, § 26.**

**81-1232 Repealed. Laws 1986, LB 965, § 26.**

**81-1233 Repealed. Laws 1986, LB 965, § 26.**

**81-1234 Repealed. Laws 1986, LB 965, § 26.**

**81-1235 Repealed. Laws 1986, LB 965, § 26.**

**81-1236 Repealed. Laws 1986, LB 965, § 26.**

**81-1237 Repealed. Laws 1986, LB 965, § 26.**

**81-1238 Repealed. Laws 1986, LB 965, § 26.**

**81-1239 Repealed. Laws 1986, LB 965, § 26.**

**81-1240 Repealed. Laws 1986, LB 965, § 26.**

**81-1241 Repealed. Laws 1986, LB 965, § 26.**

**81-1242 Repealed. Laws 1986, LB 965, § 26.**

**81-1243 Repealed. Laws 1986, LB 965, § 26.**

**81-1244 Repealed. Laws 1981, LB 545, § 52.**

(f) NEBRASKA VISITORS DEVELOPMENT ACT

**81-1245 Transferred to section 81-3702.**

**81-1246 Transferred to section 81-3703.**

**81-1247 Transferred to section 81-3707.**

**81-1248 Transferred to section 81-3706.**

**81-1249 Transferred to section 81-3708.**

**81-1250 Transferred to section 81-3709.**

**81-1251** Transferred to section 81-3705.

**81-1252** Transferred to section 81-3714.

**81-1253** Transferred to section 81-3715.

**81-1254** Transferred to section 81-3716.

**81-1255** Transferred to section 81-3717.

**81-1256** Transferred to section 81-3718.

**81-1257** Transferred to section 81-3719.

**81-1258** Transferred to section 81-3720.

**81-1259** Transferred to section 81-3721.

**81-1260** Transferred to section 81-3722.

**81-1261** Transferred to section 81-3723.

**81-1262** Transferred to section 81-3724.

**81-1263** Transferred to section 81-3701.

**81-1264** Repealed. Laws 1983, LB 114, § 1.

(g) VENTURE CAPITAL NETWORK ACT

**81-1265** Repealed. Laws 2011, LB 455, § 1.

**81-1266** Repealed. Laws 2011, LB 455, § 1.

**81-1267** Repealed. Laws 2011, LB 455, § 1.

**81-1268** Repealed. Laws 2011, LB 455, § 1.

**81-1269** Repealed. Laws 2011, LB 455, § 1.

**81-1270** Repealed. Laws 2011, LB 455, § 1.

**81-1271** Repealed. Laws 2011, LB 455, § 1.

(h) BUSINESS DEVELOPMENT PARTNERSHIP ACT

**81-1272** Act, how cited.

Sections 81-1272 to 81-1277 shall be known and may be cited as the Business Development Partnership Act.

**Source:** Laws 1987, LB 736, § 1.

**81-1273** Legislative findings.

The Legislature finds and declares:

(1) That the availability of business development services at various geographic locations throughout the state would result in the retention, expansion, and diversification of existing businesses and the creation of new businesses;

(2) That the Board of Regents of the University of Nebraska may authorize the Nebraska Business Development Center as a department of the University of Nebraska at Omaha. The Nebraska Business Development Center, if authorized under this section, may provide business development services through a network of small business development centers at: (a) Chadron State College, Peru State College, and Wayne State College, if authorized by the Board of Trustees of the Nebraska State Colleges; and (b) the University of Nebraska at Kearney, the University of Nebraska-Lincoln, and the University of Nebraska at Omaha, if authorized by the Board of Regents of the University of Nebraska;

(3) That business development services may be augmented through specialized research and technical assistance services; and

(4) That the Existing Business Assistance Division of the Department of Economic Development shall coordinate, administer, and support the delivery of such services.

**Source:** Laws 1987, LB 736, § 2; Laws 1989, LB 639, § 8; Laws 1989, LB 247, § 12; Laws 2011, LB334, § 5.

**81-1274 Business Development Services Program; created; administration.**

There is hereby created the Business Development Services Program in the Existing Business Assistance Division of the Department of Economic Development. The division shall be responsible for the administration of the program and shall have the power and authority to contract for services as provided in sections 81-1275 and 81-1276.

**Source:** Laws 1987, LB 736, § 3; Laws 1989, LB 639, § 9.

**81-1275 Nebraska Business Development Center; duties.**

If the Nebraska Business Development Center is authorized by the Board of Regents of the University of Nebraska pursuant to section 81-1273, the Existing Business Assistance Division shall contract with the Nebraska Business Development Center to administer, manage, and deliver regional small business services, and the Nebraska Business Development Center shall:

(1) Provide such services as close as possible to small businesses through a network of small business development centers located in Omaha, Lincoln, Kearney, Wayne, North Platte, Scottsbluff or Gering, Chadron, Peru, and such other communities as the Existing Business Assistance Division shall determine based on the applications of communities desiring to be the location of a small business development center. Small business development centers in such communities shall not be required if the location within a community is on property under the control of the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges and the governing body with control of such property has not authorized such small business development center pursuant to section 81-1273. In determining the location of small business development centers, the division shall consider several factors, including, but not limited to: (a) Preexisting small business development centers; (b) geographic accessibility; and (c) existing resources such as building space and office equipment or the willingness of a community to provide some or all of those resources. The division shall prescribe the form of the application for location of a small business development center and take all actions necessary in the processing of such applications;

(2) Integrate activities funded through the Business Development Partnership Act with those funded by the United States Small Business Administration or any other program supporting the Nebraska small business development centers;

(3) Furnish one-to-one individual counseling to small businesses;

(4) Assist in technology transfer, research, and coupling from existing sources to small businesses;

(5) Maintain current information concerning federal, state, and local regulations that affect small businesses and counsel small business on methods of compliance;

(6) Coordinate and conduct research into technical and general small business problems for which there are no ready solutions;

(7) Provide and maintain a comprehensive library that contains current information and statistical data needed by small businesses;

(8) Maintain a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associations in order to help address the various needs of the small business community;

(9) Conduct indepth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality; and

(10) Provide other services as determined in consultation with the Existing Business Assistance Division.

**Source:** Laws 1987, LB 736, § 4; Laws 1989, LB 639, § 10; Laws 2011, LB334, § 6.

#### **81-1276 Existing Business Assistance Division; contracts; authorized.**

The Existing Business Assistance Division may contract with any postsecondary institution of higher education, community organization, governmental agency or entity, or any other profit or nonprofit entity to provide specialized research, technology development assistance, technology transfer services, financial packaging or leveraging services, human resources development services, surety bond support, or such other specialized services as the division deems necessary if preference is given to entities based in or operating in Nebraska.

**Source:** Laws 1987, LB 736, § 5; Laws 1989, LB 639, § 11; Laws 1997, LB 861, § 1.

#### **81-1277 Existing Business Assistance Division; contracts; reports.**

The Existing Business Assistance Division shall require, as a condition of contracts awarded under the Business Development Services Program, satisfactory quarterly reports from recipients describing services provided, clients served, and expenditures. The division shall include, as part of the Department of Economic Development's annual status report under section 81-1201.11, a description of the services provided under the Business Development Partner-

ship Act, an analysis of the impact of the services, recommendations regarding the services, and an evaluation of the performance of service deliverers.

**Source:** Laws 1987, LB 736, § 6; Laws 1989, LB 639, § 12; Laws 2011, LB404, § 6.

(i) AGRICULTURAL PRODUCTS RESEARCH

**81-1278 Nebraska Agricultural Products Research Fund; created; investment.**

There is hereby created for the use of the Department of Economic Development a fund, to be known as the Nebraska Agricultural Products Research Fund, to consist of any funds appropriated by the Legislature and any funds received by gift or from the federal government to be used for the purpose provided in section 81-1279. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Agricultural Products Research 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 1959, c. 10, § 1, p. 117; Laws 1963, c. 14, § 1, p. 92; Laws 1965, c. 478, § 1, p. 1539; Laws 1967, c. 11, § 1, p. 95; Laws 1969, c. 584, § 31, p. 2360; Laws 1979, LB 187, § 258; R.S.1943, (1987), § 2-2501; Laws 1989, LB 10, § 1; Laws 1994, LB 1066, § 108; Laws 2009, First Spec. Sess., LB3, § 74.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1279 Fund; use.**

The proceeds of the Nebraska Agricultural Products Research Fund and any funds received by gift or from the federal government to be used for the purpose provided in this section shall be expended by the Department of Economic Development for research and development of new, additional, and improved uses for agricultural products and for the promotion of industrialization of products developed by the expenditure of such funds. The department may, within the limits of the funds available to it, coordinate and expedite activities toward research with the Institute of Agriculture and Natural Resources of the University of Nebraska.

**Source:** Laws 1959, c. 10, § 2, p. 117; Laws 1963, c. 15, § 1, p. 93; Laws 1965, c. 478, § 2, p. 1539; Laws 1967, c. 11, § 2, p. 95; R.S.1943, (1987), § 2-2502; Laws 1989, LB 10, § 2.

**81-1280 Fund; patents; powers of director; royalties.**

The Director of Economic Development may acquire title on behalf of the State of Nebraska to any patent resulting from research projects conducted with funds of the Nebraska Agricultural Products Research Fund. The director, with the approval of the Governor, may grant licenses or otherwise dispose of a patent as he or she deems to be most favorable to the State of Nebraska. Any

royalties or other income derived from the licensing, sale, or use of a patent shall be paid into the fund to be used for the purposes of the fund.

**Source:** Laws 1961, c. 7, § 1, p. 82; Laws 1967, c. 11, § 3, p. 96; R.S.1943, (1987), § 2-2504; Laws 1989, LB 10, § 3.

(j) HOUSING AFFORDABILITY STRATEGY

**81-1281 Comprehensive housing affordability strategy; established; contents; advisory committee; powers and duties.**

(1) The Department of Economic Development shall establish a comprehensive housing affordability strategy. The strategy shall identify needs, consider issues, and make recommendations regarding housing affordability, housing availability, housing accessibility, and housing quality in Nebraska. The department shall submit the strategy to the Governor and the Clerk of the Legislature by October 1, 1991.

(2) The department shall establish a housing advisory committee consisting of individuals and representatives of groups involved with housing issues in Nebraska to assist with the establishment of the strategy. The department shall work with the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Banking and Finance, the Nebraska Investment Finance Authority, and any other public or private agency involved in addressing housing needs in Nebraska.

(3) The strategy shall:

(a) Describe the state's estimated housing needs for the ensuing five-year period and the need for assistance for different types of tenure and for different categories of residents such as very-low-income, low-income, and moderate-income persons, the elderly, single persons, large families, residents of nonmetropolitan areas, and other categories determined to be appropriate by the committee;

(b) Describe the nature and extent of homelessness in the state, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness and a description of the strategy for (i) helping low-income families avoid homelessness, (ii) addressing the emergency shelter and transitional housing needs of the homeless, including an inventory of facilities and services that meet such needs in Nebraska, and (iii) helping homeless persons make the transition to permanent housing;

(c) Describe significant characteristics of the housing market;

(d) Explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in Nebraska are affected by public policies, including tax policies affecting land and other property, land-use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment;

(e) Explain the institutional structure, including private industry, nonprofit organizations, and public institutions through which the state will carry out the strategy, assessing the strengths and gaps and describing what will be done to overcome any gaps;

(f) Describe the means of coordination and cooperation among the units of state and local government in the development and implementation of the strategy;

(g) Establish standards and procedures for monitoring housing activities undertaken because of the strategy; and

(h) Include any other information on housing in Nebraska deemed relevant by the Department of Economic Development or the committee.

**Source:** Laws 1991, LB 825, § 51; Laws 1996, LB 1044, § 866; Laws 2007, LB296, § 755.

(k) RURAL DEVELOPMENT

**81-1282 Transferred to section 81-3601.**

**81-1283 Transferred to section 81-3602.**

**81-1284 Transferred to section 81-3603.**

**81-1285 Transferred to section 81-3604.**

**81-1286 Transferred to section 81-3605.**

**81-1287 Transferred to section 81-3606.**

(l) PARTNERSHIPS FOR ECONOMIC DEVELOPMENT ACT

**81-1288 Repealed. Laws 2002, LB 859, § 1.**

**81-1289 Repealed. Laws 2002, LB 859, § 1.**

**81-1290 Repealed. Laws 2002, LB 859, § 1.**

**81-1291 Repealed. Laws 2002, LB 859, § 1.**

**81-1292 Repealed. Laws 2002, LB 859, § 1.**

**81-1293 Repealed. Laws 2002, LB 859, § 1.**

**81-1294 Repealed. Laws 2002, LB 859, § 1.**

(m) MICROENTERPRISE DEVELOPMENT ACT

**81-1295 Repealed. Laws 2011, LB 387, § 18.**

**81-1296 Repealed. Laws 2011, LB 387, § 18.**

**81-1297 Repealed. Laws 2011, LB 387, § 18.**

**81-1298 Repealed. Laws 2011, LB 387, § 18.**

**81-1299 Repealed. Laws 2011, LB 387, § 18.**

**81-12,100 Repealed. Laws 2011, LB 387, § 18.**

**81-12,101 Repealed. Laws 2011, LB 387, § 18.**

**81-12,102 Repealed. Laws 2011, LB 387, § 18.**

**81-12,103 Repealed. Laws 2011, LB 387, § 18.**

**81-12,104 Repealed. Laws 2011, LB 387, § 18.**

**81-12,105 Repealed. Laws 2011, LB 387, § 18.**

**81-12,105.01 Repealed. Laws 2011, LB 387, § 18.**

(n) NEBRASKA VENTURE CAPITAL FORUM ACT

**81-12,106 Repealed. Laws 2009, LB 3, § 1.**

**81-12,107 Repealed. Laws 2009, LB 3, § 1.**

**81-12,108 Repealed. Laws 2009, LB 3, § 1.**

**81-12,109 Repealed. Laws 2009, LB 3, § 1.**

**81-12,110 Repealed. Laws 2009, LB 3, § 1.**

**81-12,111 Repealed. Laws 2009, LB 3, § 1.**

**81-12,112 Repealed. Laws 2009, LB 3, § 1.**

**81-12,113 Repealed. Laws 2009, LB 3, § 1.**

**81-12,114 Repealed. Laws 2009, LB 3, § 1.**

**81-12,115 Repealed. Laws 2009, LB 3, § 1.**

**81-12,116 Repealed. Laws 2009, LB 3, § 1.**

(o) NEBRASKA OPPORTUNITY ZONE ACT

**81-12,117 Act, how cited.**

Sections 81-12,117 to 81-12,124 shall be known and may be cited as the Nebraska Opportunity Zone Act.

**Source:** Laws 2005, LB 546, § 1.

Termination date December 31, 2010.

**81-12,118 Legislative findings and declarations.**

The Legislature finds and declares that the area adjacent to the Interstate 80 corridor running through the entire length of Nebraska affords an excellent opportunity for business expansion, economic development, job creation, and education-business partnerships. The Legislature further declares that this opportunity is best realized through regional cooperation in which the communities, businesses, and educational entities in the corridor work together to pursue common goals within opportunity zones. The Department of Economic Development is encouraged to work with interested parties within the corridor to create opportunity zones similar to the one established in section 81-12,123.

**Source:** Laws 2005, LB 546, § 2.

Termination date December 31, 2010.

**81-12,119 Opportunity zone commission; powers and duties.**

An opportunity zone commission shall advocate and recommend programs that encourage regional cooperation and foster community sustainability and economic development initiatives. The chairperson and vice-chairperson of a commission shall supervise the hiring of the executive director using the state

personnel hiring process. The Department of Economic Development shall provide administrative and technical support to a commission. A commission may secure cooperation and assistance of and funding from other appropriate government and private-sector entities.

**Source:** Laws 2005, LB 546, § 3.

Termination date December 31, 2010.

**81-12,120 Opportunity zone; commission; duties.**

An opportunity zone commission shall:

- (1) Define boundaries for the opportunity zone;
- (2) Focus attention on and increase awareness of the opportunities and needs in a particular region of Nebraska, referred to as the opportunity zone;
- (3) Advocate by proposing solutions to challenges faced in the opportunity zone;
- (4) Encourage and support continuity, coordination, and cooperation among national, state, multicompany, and local economic development initiatives and service providers in the opportunity zone;
- (5) Serve as an advisory body to the Governor, state agencies, and the Legislature on economic development issues in the opportunity zone;
- (6) Establish an information clearinghouse on challenges and needs, development services, model initiatives, available resources, and service providers;
- (7) Foster multicompany partnerships;
- (8) Foster regional marketing activities to promote the opportunity zone;
- (9) Study and develop recommendations for uniform county zoning within the opportunity zone; and
- (10) Accept contributions from member entities to fund the activities of the commission.

**Source:** Laws 2005, LB 546, § 4.

Termination date December 31, 2010.

**81-12,121 Opportunity zone commission; administrative powers.**

An opportunity zone 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 2005, LB 546, § 5.

Termination date December 31, 2010.

**81-12,122 Repealed. Laws 2012, LB 782, § 253.****81-12,123 Nebraska Innovation Zone Commission; created; members; meetings; quorum; expenses; duties.**

(1) The Legislature finds an opportunity exists to develop high technology business between the Omaha and Lincoln business communities, the university system of the State of Nebraska, including the University of Nebraska-Lincoln, the University of Nebraska at Omaha, and the University of Nebraska Medical Center, and Sarpy County, including Offutt Air Force Base. The Legislature further finds that the cities of Lincoln and Omaha are moving toward designation as a single metropolitan statistical area for census purposes, possibly by the federal decennial census. Therefore, an opportunity zone commission should be established for eastern Nebraska.

(2) The Nebraska Innovation Zone Commission is created. The commission shall consist of the following members:

- (a) Three members appointed by the county board of Douglas County;
- (b) Two members appointed by the county board of Sarpy County;
- (c) Two members appointed by the county board of Lancaster County;
- (d) Two members appointed by the county board of Cass County;
- (e) One member appointed by the county board of Saunders County;
- (f) One member appointed by the county board of Washington County;
- (g) One member appointed by the city council of Omaha;
- (h) One member appointed by the city council of Lincoln;
- (i) One member representing cities of the first class within Douglas, Sarpy, Lancaster, Cass, Saunders, and Washington counties appointed by the other members of the commission;
- (j) One member representing cities of the second class and villages within Douglas, Sarpy, Lancaster, Cass, Saunders, and Washington counties appointed by the other members of the commission;
- (k) One member appointed by the Board of Regents of the University of Nebraska;
- (l) One member appointed by the community college areas;
- (m) One member appointed by the board of directors of the Papio-Missouri River Natural Resources District; and
- (n) One member appointed by the board of directors of the Lower Platte South Natural Resources District.

(3) 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 and shall each serve a two-year term as chairperson and vice-chairperson, respectively. 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. The members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The commission shall carry out the duties set forth in section 81-12,120 as they relate to eastern Nebraska.

**Source:** Laws 2005, LB 546, § 7.

Termination date December 31, 2010.

**81-12,124 Act; termination.**

The provisions of the Nebraska Opportunity Zone Act shall terminate on December 31, 2010.

**Source:** Laws 2005, LB 546, § 8.

Termination date December 31, 2010.

(p) BUILDING ENTREPRENEURIAL COMMUNITIES ACT

**81-12,125 Repealed. Laws 2011, LB 387, § 18.**

**81-12,126 Repealed. Laws 2011, LB 387, § 18.**

**81-12,127 Repealed. Laws 2011, LB 387, § 18.**

**81-12,128 Repealed. Laws 2011, LB 387, § 18.**

(q) NEBRASKA OPERATIONAL ASSISTANCE ACT

**81-12,129 Act, how cited.**

Sections 81-12,129 to 81-12,135 shall be known and may be cited as the Nebraska Operational Assistance Act.

**Source:** Laws 2007, LB425, § 1.

**81-12,130 Legislative findings.**

The Legislature finds and declares that:

(1) Insufficient venture capital resources exist within the State of Nebraska to meet substantial portions of the equity needs of new and high-growth business enterprises;

(2) Nebraska is a net exporter of venture capital;

(3) The venture capital needs of Nebraska business enterprises are not currently being met due to the lack of operational readiness and expertise among new and high-growth business enterprises;

(4) The best and primary role the State of Nebraska can play is creating an effective operational assistance program to assist Nebraska businesses in becoming venture-ready to effectively attract and retain capital in this state in partnership with the private sector;

(5) Entrepreneurs and high-growth business enterprises need technical assistance in understanding equity markets and how to position themselves to receive equity funding; and

(6) Creation of an operational assistance program must be flexible and market driven.

**Source:** Laws 2007, LB425, § 2.

**81-12,131 Terms, defined.**

For purposes of the Nebraska Operational Assistance Act, unless the context otherwise requires:

(1) Business enterprise means an individual, corporation, partnership, limited liability company, or joint-stock company with its principal place of business in Nebraska or potentially in Nebraska;

(2) Program means the Nebraska Operational Assistance Program; and

(3) Venture capital means equity financing provided by investors to business enterprises that have the potential for high growth and in which the risk for loss and the potential for profit may be considerable.

**Source:** Laws 2007, LB425, § 3.

**81-12,132 Purpose of act.**

The purpose of the Nebraska Operational Assistance Act is to create a program to assist business enterprises in Nebraska in achieving the thresholds necessary for private equity investments.

**Source:** Laws 2007, LB425, § 4.

**81-12,133 Nebraska Operational Assistance Program; established; department select organization to carry out act; considerations.**

(1) The Department of Economic Development shall establish the Nebraska Operational Assistance Program.

(2) The program shall assist potential high-growth businesses in establishing a foundation sufficient for the attraction of private equity including, but not limited to, market analysis, executive recruitment, sales and marketing, financial planning, business structure, and intellectual property development. The program may also include, but need not be limited to:

(a) Cooperation with other service entities in facilitating effectiveness of the program including, but not limited to, financial institutions, attorneys, accountants, investment banking firms, established venture capital funds, institutions of higher education, local and regional development organizations, business development centers, business incubators, and utilities;

(b) A statewide system for facilitating venture capital investing with its primary emphasis upon assisting those business enterprises generally seeking up to one million dollars in new equity financing;

(c) Identification and provision of information to investors about investment opportunities in Nebraska business enterprises;

(d) Identification and provision of information to entrepreneurs and high-growth business enterprises about investors seeking investment opportunities;

(e) Service as a clearinghouse and access point for information about venture capital investment opportunities in Nebraska;

(f) Service as the central organization and means of delivering appropriate education and training programs for potential investors in business enterprises;

(g) Facilitation of the formation of private venture capital funds; and

(h) Assistance in the formation of intrastate or industry-specific venture capital networks.

(3)(a) The department shall select a single private, nonprofit organization for the purpose of carrying out the functions of the Nebraska Operational Assistance Act which is either:

(i) Incorporated in the State of Nebraska and exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code, as such section existed on January 1, 2007; or

(ii) A Nebraska corporation or Nebraska organization that is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code, as such section existed on January 1, 2007.

(b) The department, in selecting an organization pursuant to subdivision (a) of this subsection, shall consider, among other factors, the organization's ability to deliver a statewide program and the organization's ability to provide the matching funds described in section 81-12,134.

**Source:** Laws 2007, LB425, § 5.

#### **81-12,134 Appropriation of funds; grant; funding; matching funds.**

The Legislature shall appropriate funds to the Department of Economic Development which shall be awarded as a grant to the private, nonprofit organization selected pursuant to subsection (3) of section 81-12,133 to carry out the purposes of the Nebraska Operational Assistance Act. The department may receive funds from local or federal government, private foundations, or other sources. The private, nonprofit organization shall provide matching funds of at least one-third of all funds appropriated for the Nebraska Operational Assistance Program. The private, nonprofit organization may provide any part of the matching funds as an in-kind contribution.

**Source:** Laws 2007, LB425, § 6.

#### **81-12,135 Information regarding activities; department; report.**

The Department of Economic Development shall submit information regarding its activities under the Nebraska Operational Assistance Act as part of the department's annual status report under section 81-1201.11.

**Source:** Laws 2007, LB425, § 7; Laws 2011, LB404, § 8.

#### **(r) SMALL BUSINESS INNOVATION ACT**

##### **81-12,136 Act, how cited.**

Sections 81-12,136 to 81-12,143 shall be known and may be cited as the Small Business Innovation Act.

**Source:** Laws 2011, LB345, § 1.

Termination date December 31, 2014.

##### **81-12,137 Legislative intent.**

It is the intent of the Legislature to evolve Nebraska's economic development and job creation policies in order to remain competitive by adopting recommendations from the statewide strategic plan developed by the Innovation and Entrepreneurship Task Force. The strategic plan recognizes that Nebraska's current policy tools targeted to fostering high-wage job growth among small businesses, entrepreneurs, and innovators have not kept pace with other states

and jurisdictions. Nebraska has a clear opportunity to improve our entrepreneurial ecosystem by adopting proactive policy solutions with demonstrated positive results.

**Source:** Laws 2011, LB345, § 2.

Termination date December 31, 2014.

**81-12,138 Terms, defined.**

For purposes of the Small Business Innovation Act:

(1) Department means the Department of Economic Development;

(2) Nebraska-based growth business means a corporation, partnership, limited liability company, limited partnership, or limited liability partnership registered with the Secretary of State that has two to fifty employees and annual sales revenue of no less than five hundred thousand dollars and no more than two million five hundred thousand dollars; and

(3) Small business innovation means the provision of technical resources to locally owned and operated Nebraska-based growth businesses to foster development, growth, and high-wage job creation.

**Source:** Laws 2011, LB345, § 3; Laws 2013, LB628, § 1.

Termination date December 31, 2014.

**81-12,139 Department; contract authorized.**

The department may enter into a contract with a Nebraska-based nonprofit entity, small business development center, community development corporation, Nebraska-based institution of higher education, chamber of commerce, or regional development district for the purpose of carrying out the Small Business Innovation Act.

**Source:** Laws 2011, LB345, § 4.

Termination date December 31, 2014.

**81-12,140 Pilot program; established.**

(1) The Legislature hereby establishes a statewide pilot program to support and assist up to forty Nebraska-based growth businesses. At least one-half of the businesses assisted under the Small Business Innovation Act shall be located in counties with a population of fewer than fifty thousand inhabitants.

(2) The pilot program shall provide technical assistance to Nebraska-based growth businesses that includes:

(a) Economic gardening components and information tools, including industry trends, industry financial data, state and national demographic trends, competitive intelligence, and marketing lists; and

(b) Decisionmaking tools, including strategy analysis, management team makeup, capital referrals, and labor referrals.

**Source:** Laws 2011, LB345, § 5.

Termination date December 31, 2014.

**81-12,141 Legislative intent for appropriations.**

It is the intent of the Legislature to appropriate two hundred thousand dollars from the General Fund for FY2011-12 and two hundred thousand

dollars from the General Fund for FY2012-13 for the purpose of providing funding to carry out the Small Business Innovation Act.

**Source:** Laws 2011, LB345, § 6.

Termination date December 31, 2014.

**81-12,142 Report; contents.**

The department shall prepare and present electronically a report to the Legislature by December 1, 2014, on the Small Business Innovation Act that includes, but is not limited to, businesses assisted, aggregate change in sales revenue, number of jobs created, and range of newly created jobs that includes an average wage.

**Source:** Laws 2011, LB345, § 7; Laws 2012, LB782, § 194; Laws 2013, LB628, § 2.

Termination date December 31, 2014.

**81-12,143 Act; termination.**

The Small Business Innovation Act terminates on December 31, 2014.

**Source:** Laws 2011, LB345, § 8; Laws 2013, LB628, § 3.

Termination date December 31, 2014.

(s) SITE AND BUILDING DEVELOPMENT ACT

**81-12,144 Act, how cited.**

Sections 81-12,144 to 81-12,151 shall be known and may be cited as the Site and Building Development Act.

**Source:** Laws 2011, LB388, § 1.

**81-12,145 Legislative findings.**

The Legislature finds that current economic conditions, lack of available industrial sites and buildings, and declining resources at all levels of government adversely affect the ability of Nebraska's cities and villages to obtain viable industrial sites on which to build businesses, obtain buildings, and create jobs. Lack of industrial sites and buildings also affects the ability of communities to maintain and develop stable and growth-prone economies.

Furthermore, the Legislature finds that Nebraska is at a competitive disadvantage for business development relative to other states in the nation due to a lack of appropriately sized industrial sites and buildings available for business relocations to Nebraska and expansions. The future of investment and jobs in Nebraska will suffer should the state continue to ignore this challenge.

To enhance the economic development of the state and to provide for the general prosperity of all of Nebraska's citizens, it is in the public interest to assist in the provision of industrial-ready sites and buildings in all areas of the state. The establishment of the Site and Building Development Fund will assist in creating conditions favorable to meeting the industrial readiness of the state.

**Source:** Laws 2011, LB388, § 2.

**81-12,146 Site and Building Development Fund; created; funding.**

The Site and Building Development Fund is created. The fund shall receive money pursuant to section 76-903 and may include revenue from appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources. The Department of Economic Development, as part of its comprehensive business development strategy, shall administer the fund.

The State Treasurer shall transfer one million dollars from the Affordable Housing Trust Fund to the Site and Building Development Fund on or after January 1, 2012, but no later than January 10, 2012.

The State Treasurer shall transfer one million dollars from the Affordable Housing Trust Fund to the Site and Building Development Fund on or after January 1, 2013, but no later than January 10, 2013.

**Source:** Laws 2011, LB388, § 3.

**81-12,147 Site and Building Development Fund; use; eligible activities.**

The Department of Economic Development shall use the Site and Building Development Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for industrial site and building development and for expenses of the department as appropriated by the Legislature for administering the fund. The following activities are eligible for assistance from the fund:

(1) Grants or zero-interest loans to villages, cities, or counties to acquire land, infuse infrastructure, or otherwise make large sites and buildings ready for industrial development;

(2) Matching funds for new construction, rehabilitation, or acquisition of land and buildings to assist villages, cities, and counties;

(3) Technical assistance, design and finance services, and consultation for villages, cities, and counties for the creation of industrial-ready sites and buildings;

(4) Loan guarantees for eligible projects;

(5) Projects making industrial-ready sites and buildings more accessible to business and industry; and

(6) Infrastructure projects necessary for the development of industrial-ready sites and buildings.

**Source:** Laws 2011, LB388, § 4.

**81-12,148 Entities eligible to receive assistance; matching funds.**

Governmental subdivisions and Nebraska nonprofit organizations are eligible to receive assistance under the Site and Building Development Act. Any entity receiving assistance under the act shall provide, or cause to be provided, matching funds for the eligible activity in an amount determined by the Department of Economic Development, which amount shall be at least equal to one hundred percent of the amount of assistance provided by the Site and Building Development Fund. Nothing in the act shall be construed to allow individuals or businesses to receive direct loans from the fund.

**Source:** Laws 2011, LB388, § 5.

**81-12,149 Department; allocate funds; qualified action plan; contents; powers of department.**

(1) During each calendar year in which funds are available from the Site and Building Development Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than forty percent, to nonmetropolitan areas. For purposes of this section, nonmetropolitan areas means counties with fewer than one hundred thousand inhabitants according to the most recent federal decennial census. In selecting projects to receive fund assistance, the department shall develop a qualified action plan by January 1 of each even-numbered year. The plan shall give first priority to financially viable projects that have an agreement with a business that will locate a site within ninety days of the signed agreement and to financially viable projects located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act. The plan shall set forth selection criteria to be used to determine priorities of the fund which are appropriate to local conditions, including the community's immediate need for site and building development, proposed increases in jobs and investment, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund. The Director of Economic Development shall submit the plan to the Governor for approval.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

**Source:** Laws 2011, LB388, § 6; Laws 2013, LB78, § 14; Laws 2014, LB800, § 7.  
Effective date July 18, 2014.

#### Cross References

**Enterprise Zone Act**, see section 13-2101.01.

### **81-12,150 Rules and regulations.**

The Department of Economic Development shall adopt and promulgate rules and regulations to carry out the Site and Building Development Act.

**Source:** Laws 2011, LB388, § 7; Laws 2013, LB78, § 15.

### **81-12,151 Annual report.**

The Department of Economic Development shall submit electronically an annual report regarding the Site and Building Development Act to the Legislature no later than July 1 of each year beginning July 1, 2012. The report shall contain no information that is protected by state or federal confidentiality laws.

**Source:** Laws 2011, LB388, § 8; Laws 2012, LB782, § 195.

## (t) BUSINESS INNOVATION ACT

### **81-12,152 Act, how cited.**

Sections 81-12,152 to 81-12,167 shall be known and may be cited as the Business Innovation Act.

**Source:** Laws 2011, LB387, § 1.  
Termination date December 1, 2021.

**81-12,153 Terms, defined.**

For purposes of the Business Innovation Act:

- (1) Department means the Department of Economic Development;
- (2) Distressed area means a municipality, a county with a population of fewer than one hundred thousand inhabitants according to the most recent federal decennial census, an unincorporated area within a county, or a census tract in Nebraska that (a) has an unemployment rate which exceeds the statewide average unemployment rate, (b) has a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;
- (3) Federal grant program means the federal Small Business Administration's Small Business Innovation Research grant program;
- (4) Microenterprise means a for-profit business entity with not more than ten full-time equivalent employees;
- (5) Prototype means an original model on which something is patterned by a resident of Nebraska or a company located in Nebraska; and
- (6) Value-added agriculture means increasing the net worth of food or nonfood agricultural products by processing, alternative production and handling methods, collective marketing, or other innovative practices.

**Source:** Laws 2011, LB387, § 2.

Termination date December 1, 2021.

**81-12,154 Purpose of act.**

The purpose of the Business Innovation Act is to encourage and support the transfer of Nebraska-based technology and innovation in rural and urban areas of Nebraska in order to create high growth, high technological companies, small businesses, and microenterprises and to enhance creation of wealth and quality jobs. The Legislature finds that the act will:

- (1) Provide technical assistance planning grants pursuant to section 81-12,157 to facilitate phase one applications for the federal grant program;
- (2) Provide financial assistance pursuant to section 81-12,157 to companies receiving phase one and phase two grants pursuant to the federal grant program;
- (3) Provide financial assistance pursuant to section 81-12,158 to companies or individuals creating prototypes;
- (4) Establish a financial assistance program pursuant to section 81-12,159 for innovation in value-added agriculture;
- (5) Establish a financial assistance program pursuant to section 81-12,160 to identify commercial products and processes;
- (6) Provide financial assistance pursuant to section 81-12,161 to companies using Nebraska public or private college and university researchers and facilities for applied research projects;
- (7) Provide support and funding pursuant to section 81-12,162 for microlending and microenterprise entities; and
- (8) Provide support for locally owned and operated Nebraska-based, high growth businesses by providing technical resources to foster development, growth, and high wage creation. For purposes of this subdivision, Nebraska-

based, high growth business means a corporation, partnership, limited liability company, limited partnership, or limited liability partnership registered with the Secretary of State that has two to fifty employees and has annual sales of no less than five hundred thousand dollars and no more than two million five hundred thousand dollars.

**Source:** Laws 2011, LB387, § 3; Laws 2014, LB1114, § 2.  
Effective date July 18, 2014.  
Termination date December 1, 2021.

**81-12,155 Qualified action plan; department; duties; contents.**

In selecting projects to receive financial assistance under the Business Innovation Act, the department shall develop a qualified action plan by January 1 of each even-numbered year. The plan shall set forth selection criteria to be used to determine priorities which are appropriate to local conditions and the state's economy, including the state's immediate need for innovation development, proposed increases in jobs and investment, private dollars leveraged, industry support and participation, and repayment, in part or in whole, of financial assistance awarded under the act. The department shall submit the plan to the Governor for approval.

**Source:** Laws 2011, LB387, § 4; Laws 2013, LB78, § 16.  
Termination date December 1, 2021.

**81-12,156 Funding; use; preference.**

At least forty percent of the funding for financial assistance programs in sections 81-12,157 to 81-12,162 shall be used for projects that best alleviate chronic economic distress in distressed areas. When selecting projects for funding under this section, the department shall give a preference to projects located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act.

**Source:** Laws 2011, LB387, § 5; Laws 2014, LB800, § 8.  
Effective date July 18, 2014.  
Termination date December 1, 2021.

**Cross References**

**Enterprise Zone Act**, see section 13-2101.01.

**81-12,157 Planning grants; phase one program; limitations.**

(1) The department shall establish a phase one program to provide grants to small businesses that qualify under the federal grant program for the purposes of planning for an application under the federal grant program. If a small business receives funding under the federal grant program, the department or a nonprofit entity designated by the department may make grants to match up to sixty-five percent of the amount of the federal grant.

(2) Planning grants under subsection (1) of this section shall not exceed five thousand dollars per project. Federal award matching grants under this section shall not exceed one hundred thousand dollars. No business shall receive funding for more than one project every two years.

(3) The department shall not award more than one million dollars per year for grants under this section.

**Source:** Laws 2011, LB387, § 6.

Termination date December 1, 2021.

**81-12,158 Financial assistance program to create prototype of certain products; established; funds; match required; limitation.**

(1) The department shall establish a financial assistance program to provide financial assistance to businesses that employ no more than five hundred employees or to individuals for the purposes of creating a prototype of a product stemming from research and development at a business operating in Nebraska or a public or private college or university in Nebraska.

(2) Funds shall be matched by nonstate funds equivalent in money equal to fifty percent of the funds requested. Matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature. The amount the department may provide shall not exceed fifty thousand dollars per project.

(3) A business or individual applying for financial assistance under this section shall include a business plan that includes a proof-of-concept demonstration.

(4) Financial assistance under this section shall be expended within twenty-four months after the date of the awarding decision.

(5) The department shall not award more than one million dollars per year for financial assistance under this section.

**Source:** Laws 2011, LB387, § 7.

Termination date December 1, 2021.

**81-12,159 Innovation in value-added agriculture program; established; purpose; eligibility; match required; limitation.**

(1) The department shall establish an innovation in value-added agriculture program. The purpose of this program is to provide financial assistance to:

(a) Support small enterprise formation in the agricultural sector of Nebraska's rural economy, including innovative efforts for value-added enterprises;

(b) Support the development of agricultural communities and economic opportunity through innovation in farming and ranching operations, rural communities, and businesses for the development of value-added agricultural products;

(c) Enhance the income and opportunity for farming and ranching operations in Nebraska in order to stem the decline in their numbers;

(d) Increase the farming and ranching operations' share of the food-system profit;

(e) Enhance opportunities for farming and ranching operations to participate in electronic commerce and new and emerging markets that strengthen rural economic opportunities; and

(f) Encourage the production and marketing of specialty crops in Nebraska and support the creation and development of agricultural enterprises and businesses that produce and market specialty crops in Nebraska.

(2) Agricultural cooperatives, farming or ranching operations, and private businesses and enterprises operating in Nebraska shall be eligible for financial assistance under this section.

(3) An entity receiving financial assistance shall provide a match of twenty-five percent for such assistance.

(4) The department shall not award more than one million dollars per year for financial assistance under this section.

**Source:** Laws 2011, LB387, § 8.

Termination date December 1, 2021.

**81-12,160 Financial assistance program to commercialize product or process; established; purpose; funds; match required; limitation.**

(1) The department shall establish a financial assistance program to provide financial assistance to businesses operating in Nebraska that employ no more than five hundred employees or to individuals that have a prototype of a product or process for the purposes of commercializing such product or process. The applicant shall submit a feasibility study stating the potential sales and profit projections for the product or process.

(2) The department shall create a program with the following provisions to support commercialization of a product or process:

(a) Commercialization infrastructure documentation, including market assessments and start-up strategic planning;

(b) Promotion, marketing, advertising, and consulting;

(c) Management and business planning support;

(d) Linking companies and entrepreneurs to mentors;

(e) Preparing companies and entrepreneurs to acquire venture capital; and

(f) Linking companies to sources of capital.

(3) Funds shall be matched by nonstate funds equal to fifty percent of the funds requested. Matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature.

(4) The department shall not provide more than five hundred thousand dollars to any one project, and such financial assistance shall not exceed fifty percent of the cost of the project. The department shall not award more than two million dollars per year for financial assistance under this section.

(5) Financial assistance provided under this section shall be expended within twenty-four months after the date of the awarding decision.

**Source:** Laws 2011, LB387, § 9.

Termination date December 1, 2021.

**81-12,161 Financial assistance program relating to college or university research and development; established; funds; match required; limitation.**

(1) The department shall establish a financial assistance program to provide financial assistance to businesses operating in Nebraska that use the faculty or facilities of a public or private college or university in Nebraska for applied research and development of new products or use intellectual property generated at a public or private college or university in Nebraska.

(2) A business may apply for up to two awards in any four-year period per project. The department may provide up to one hundred thousand dollars for the first phase of a project. If the first phase is successful and agreed-upon contractual requirements are met during the first phase, the department may provide up to four hundred thousand dollars for the second phase of the project.

(3) Funds shall be matched by nonstate funds equivalent in money equal to one hundred percent of the funds requested for both phases of the program. Matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature.

(4) The department shall not award more than three million dollars per year for financial assistance under this section.

**Source:** Laws 2011, LB387, § 10.

Termination date December 1, 2021.

**81-12,162 Small business investment program; established; award; criteria; considerations; funds; match required; department; contracts authorized; limitation.**

(1) The department shall establish a small business investment program. The program:

(a) Shall provide grants to microloan delivery or microloan technical assistance organizations to:

(i) Better assure that Nebraska's microenterprises are able to realize their full potential to create jobs, enhance entrepreneurial skills and activity, and increase low-income households' capacity to become self-sufficient;

(ii) Provide funding to foster the creation of microenterprises;

(iii) Establish the department as the coordinating office for the facilitation of microlending and microenterprise development;

(iv) Facilitate the development of a permanent, statewide infrastructure of microlending support organizations to serve Nebraska's microenterprise and self-employment sectors;

(v) Enable the department to provide grants to community-based microenterprise development organizations in order to encourage the development and growth of microenterprises throughout Nebraska; and

(vi) Enable the department to engage in contractual relationships with statewide microlending support organizations which have the capacity to leverage additional nonstate funds for microenterprise lending.

To the maximum extent possible, the selection process should assure that the distribution of such financial assistance provides equitable access to the benefits of the Business Innovation Act by all geographic areas of the state; and

(b) May identify and coordinate other state and federal sources of funds which may be available to the department to enhance the state's ability to facilitate financial assistance pursuant to the program.

(2) To establish the criteria for making an award to a microloan delivery or microloan technical assistance organization, the department shall consider:

(a) The plan for providing business development services and microloans to microenterprises;

(b) The scope of services to be provided by the microloan delivery or microloan technical assistance organization;

(c) The plan for coordinating the services and loans provided by the microloan delivery or microloan technical assistance organization with commercial lending institutions;

(d) The geographic representation of all regions of the state, including both urban and rural communities and neighborhoods;

(e) The ability of the microloan delivery or microloan technical assistance organization to provide for business development in areas of chronic economic distress and low-income regions of the state;

(f) The ability of the microloan delivery or microloan technical assistance organization to provide business training and technical assistance to microenterprise clients;

(g) The ability of the microloan delivery or microloan technical assistance organization to monitor and provide financial oversight of recipients of microloans; and

(h) Sources and sufficiency of operating funds for the microenterprise development organization.

(3) Awards made by the department to a microloan delivery or microloan technical assistance organization may be used to:

(a) Satisfy matching fund requirements for other federal or private grants;

(b) Establish a revolving loan fund from which the microloan delivery or microloan technical assistance organization may make loans to microenterprises;

(c) Establish a guaranty fund from which the microloan delivery or microloan technical assistance organization may guarantee loans made by commercial lending institutions to microenterprises;

(d) Provide funding for the operating costs of a microloan delivery or microloan technical assistance organization not to exceed twenty percent; and

(e) Provide grants to establish loan-loss reserve funds to match loan capital borrowed from other sources, including federal microenterprise loan programs.

(4) Any award of financial assistance to a microloan delivery or microloan technical assistance organization shall meet the following qualifications:

(a) Funds shall be matched by nonstate funds equivalent in money or in-kind contributions or a combination of both equal to thirty-five percent of the grant funds requested. Such matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature;

(b) At least seventy percent of microloan funds shall be disbursed in microloans which do not exceed fifty thousand dollars or used to capitalize loan-loss reserve funds for such loans; and

(c) At least thirty percent of the microloan funds shall be used by microenterprise development assistance organizations for small business technical assistance.

The department may contract with one or more statewide microenterprise development assistance organizations to carry out this section.

(5) Each year the department shall award at least five hundred thousand dollars but not more than one million dollars under this section.

**Source:** Laws 2011, LB387, § 11.

Termination date December 1, 2021.

#### **81-12,163 Appropriations; legislative intent.**

(1) It is the intent of the Legislature to appropriate seven million dollars from the General Fund to the department for the Business Innovation Act for each of fiscal years 2011-12 and 2012-13.

(2) Up to five percent of the funds appropriated may be used by the department, or by a nonprofit entity with which the department contracts, for administrative expenses.

**Source:** Laws 2011, LB387, § 12.

Termination date December 1, 2021.

#### **81-12,164 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out the Business Innovation Act, including application procedures.

**Source:** Laws 2011, LB387, § 13; Laws 2013, LB78, § 17.

Termination date December 1, 2021.

#### **81-12,165 Department; contract authorized.**

The department may enter into a contract with a Nebraska-based nonprofit entity for the purposes of carrying out any or all of the provisions of the Business Innovation Act.

**Source:** Laws 2011, LB387, § 14.

Termination date December 1, 2021.

#### **81-12,166 Report; contents.**

The department shall submit an annual report to the Governor and the Legislature on or before July 1 of each year which includes, but is not limited to, a description of the demand for financial assistance and programs under the Business Innovation Act from all geographic regions in Nebraska, a listing of the recipients and amounts of financial assistance awarded pursuant to the act in the previous fiscal year, the impact of the financial assistance, and an evaluation of the act's performance based on the documented goals of the recipients. The report submitted to the Legislature shall be submitted electronically. The department may require recipients to provide periodic performance reports to enable the department to fulfill the requirements of this section. The

report shall contain no information that is protected by state or federal confidentiality laws.

**Source:** Laws 2011, LB387, § 15; Laws 2012, LB782, § 196.  
Termination date December 1, 2021.

**81-12,167 Act; termination.**

The Business Innovation Act terminates on December 1, 2021.

**Source:** Laws 2011, LB387, § 16; Laws 2014, LB1114, § 3.  
Effective date July 18, 2014.  
Termination date December 1, 2021.

**ARTICLE 13  
PERSONNEL**

(a) STATE PERSONNEL SERVICE

Section

- 81-1301. Sections; purpose.
- 81-1302. Terms, defined.
- 81-1303. Personnel division within the Department of Administrative Services; director; appointment.
- 81-1304. Director of Personnel; qualifications.
- 81-1305. Director of Personnel; compensation.
- 81-1306. Director of Personnel; employees.
- 81-1307. Director of Personnel; duties.
- 81-1307.01. Director of Personnel; salary survey; duties.
- 81-1307.02. Legislature; salary survey; consideration.
- 81-1308. Repealed. Laws 1997, LB 5, § 5.
- 81-1309. Repealed. Laws 1997, LB 5, § 5.
- 81-1310. Repealed. Laws 1997, LB 5, § 5.
- 81-1311. Agency heads; management personnel; powers and duties.
- 81-1312. Director of Personnel; administration; delegation of powers; exempted agency; coverage; agreement.
- 81-1313. Repealed. Laws 1997, LB 314, § 29.
- 81-1314. Delegation of authority.
- 81-1315. Employees subject to sections; prohibited from political activities; when; disciplinary action.
- 81-1316. State Personnel System; exemptions.
- 81-1317. Director; adjust terms and conditions of employment; employees not covered by collective-bargaining agreements.
- 81-1317.01. Terms and conditions of employment; employees not covered under State Personnel System; adjustments.
- 81-1318. State Personnel Board; created; members; appointment; term; powers.
- 81-1318.01. State Personnel Board; duties.
- 81-1318.02. State Personnel Board; grievance appeal; procedure; hearing officer; qualifications.
- 81-1319. Board; appeal; procedure.
- 81-1320. Permanent state employees; sick leave; schedule.
- 81-1321. State employee, defined.
- 81-1322. State employee; terminated; returns within one year; sick leave computed; exceptions.
- 81-1323. Sick leave account; balanced as of December 31 each year.
- 81-1324. Sick leave; termination.
- 81-1325. Employee; retirement; death; payment for unused sick leave benefits.
- 81-1326. Permanent employee; transferred to another agency; sick leave transferred.
- 81-1327. World Day on the Mall Cash Fund; created; use; investment.
- 81-1328. State employees; vacation time; schedule.
- 81-1328.01. Repealed. Laws 1997, LB 314, § 29.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-1328.02. Repealed. Laws 1997, LB 314, § 29.
- 81-1328.03. Repealed. Laws 1997, LB 314, § 29.
- 81-1329. Repealed. Laws 1997, LB 314, § 29.
- 81-1330. Repealed. Laws 1997, LB 314, § 29.
- 81-1331. Repealed. Laws 1997, LB 314, § 29.
- 81-1332. Repealed. Laws 1997, LB 314, § 29.
- 81-1333. Repealed. Laws 1997, LB 314, § 29.
- 81-1334. Repealed. Laws 1997, LB 314, § 29.
- 81-1335. Repealed. Laws 1987, LB 661, § 39.
- 81-1336. Repealed. Laws 1987, LB 661, § 39.
- 81-1337. Repealed. Laws 1987, LB 661, § 39.
- 81-1338. Repealed. Laws 1987, LB 661, § 39.
- 81-1339. Repealed. Laws 1987, LB 661, § 39.
- 81-1340. Repealed. Laws 1987, LB 661, § 39.
- 81-1341. Repealed. Laws 1987, LB 661, § 39.
- 81-1341.01. Repealed. Laws 1989, LB 309, § 6.
- 81-1341.02. Repealed. Laws 1988, LB 1040, § 6.
- 81-1341.03. Repealed. Laws 1989, LB 309, § 6.
- 81-1342. Repealed. Laws 1978, LB 946, § 15.
- 81-1343. Repealed. Laws 1978, LB 946, § 15.
- 81-1344. Repealed. Laws 1978, LB 946, § 15.
- 81-1345. Repealed. Laws 1987, LB 661, § 39.
- 81-1346. Employee suggestion system program; established; purpose; applicability.
- 81-1347. Employee suggestion system; Director of Personnel; adopt rules and regulations.
- 81-1347.01. Employee suggestion system; annual report.
- 81-1348. Suggestion Award Board; created; membership; expenses; rules and regulations.
- 81-1349. Repealed. Laws 1981, LB 545, § 52.
- 81-1350. Employee suggestion system; award granted; amount.
- 81-1351. Employee suggestion system; award granted; limitations.
- 81-1352. Employee suggestion system; approved suggestions; warrants; issued by State Treasurer.
- 81-1353. Employee suggestion system; awards; paid from appropriated money saved.
- 81-1354. Employee suggestion system; suggestions; ineligible for award.
- 81-1354.01. Employee rights; not restricted.
- 81-1354.02. Repealed. Laws 2000, LB 654, § 57.
- 81-1354.03. Training Revolving Fund; created; investment.
- 81-1354.04. Temporary Employee Pool Revolving Fund; created; use; investment.
- 81-1354.05. Personnel Division Revolving Fund; created; use; investment.

### (b) AFFIRMATIVE ACTION PROGRAM

- 81-1355. Public policy; equal employment opportunity.
- 81-1356. Terms, defined.
- 81-1357. Affirmative Action Office; created.
- 81-1358. Affirmative Action Office; employees.
- 81-1359. Affirmative Action Administrator; selection.
- 81-1360. Affirmative Action Administrator; duties; enumerated.
- 81-1361. Agency; plan; submit; update.
- 81-1362. Agency affirmative action individual; appointed.
- 81-1363. Repealed. Laws 2013, LB 78, § 23.
- 81-1364. Repealed. Laws 2013, LB 78, § 23.
- 81-1365. Repealed. Laws 2013, LB 78, § 23.
- 81-1366. Repealed. Laws 2013, LB 78, § 23.
- 81-1367. Affirmative action; cooperation.
- 81-1368. Agency plan; reviewed; noncompliance; effect; report.

### (c) STATE EMPLOYEES COLLECTIVE BARGAINING ACT

- 81-1369. Act, how cited.
- 81-1370. Legislative findings; purpose of act.

## Section

- 81-1371. Terms, defined.
- 81-1372. Act; supplementary to Industrial Relations Act.
- 81-1373. Bargaining units; created; other employee units.
- 81-1374. Repealed. Laws 2011, LB 397, § 36.
- 81-1375. Certified collective-bargaining agents; procedures applicable.
- 81-1376. Division of Employee Relations; created; Chief Negotiator; powers and duties.
- 81-1377. Negotiation of labor contracts.
- 81-1378. Computation of dates; effect.
- 81-1379. Negotiations; when commenced and completed; negotiated agreements; requirements; supplementary bargaining.
- 81-1380. Repealed. Laws 2011, LB 397, § 36.
- 81-1381. Submission to mediator; selection of mediator.
- 81-1382. Unresolved issues; final offers; prehearing conference; commission; authority.
- 81-1383. Commission order; commission; powers; duties; procedure; modification; appeal.
- 81-1384. Chief or appointed negotiator; report.
- 81-1385. Commission proceeding; effect on employment; order; interest.
- 81-1386. Prohibited practices; enumerated; expressions permitted.
- 81-1387. Prohibited practices; proceedings; appeal; grounds.
- 81-1388. Commission; adopt rules and regulations.
- 81-1389. Repealed. Laws 2011, LB 397, § 36.
- 81-1390. Repealed. Laws 2011, LB 397, § 36.

## (d) STATE EMPLOYEES

- 81-1391. Certified disaster service volunteer of American Red Cross; leave authorized.
- 81-1392. Repealed. Laws 2002, LB 406, § 3.
- 81-1393. Repealed. Laws 2005, LB 54, § 38.
- 81-1394. Participation in employee discount program; authorized.

## (a) STATE PERSONNEL SERVICE

**81-1301 Sections; purpose.**

The purposes of sections 81-1301 to 81-1316 are to:

- (1) Promote economy and efficiency in state government through the selection, employment, and effective utilization of qualified persons in all departments and agencies of the state;
- (2) Provide equal opportunity to qualified persons for employment on the basis of ability;
- (3) Avoid salary competition among government departments and agencies to secure or retain the services of equally qualified employees for similar positions in the state's employ;
- (4) Retain maximum authority and responsibility at the department and agency level for decisions to select or to terminate employees and for other facets of personnel management as may be consistent with the rulemaking authority of the personnel division for the development of uniform state personnel administrative procedures;
- (5) Establish the necessary procedures to assure reasonably uniform and consistent personnel practices and provide a reliable basis for personnel cost projections and staffing patterns; and
- (6) Establish uniform control over the description of and compensation for positions in all departments and agencies so that position titles and duties have

similar meanings throughout the state service and provide equal pay for persons holding similar positions in the state's service.

**Source:** Laws 1967, c. 573, § 1, p. 1885; Laws 1969, c. 802, § 3, p. 3021; Laws 1992, Third Spec. Sess., LB 14, § 10.

**81-1302 Terms, defined.**

As used in sections 81-1301 to 81-1316 and 81-1354.01, unless the context otherwise requires:

- (1) Gender when referring to masculine also includes feminine;
- (2) State personnel service shall refer to the personnel system established by such sections together with those aspects of personnel systems established under any other law as such systems may be affected by such sections;
- (3) Position shall mean an office or employment in an agency of this state, whether part time or full time, temporary or permanent, and whether occupied or vacant, or existing for the performance of specific duties;
- (4) Employee shall mean any person in the employ of an agency or department who receives a salary or wage;
- (5) Position title shall mean the title assigned a position having discrete characteristics relative to the duties, responsibilities, skills, training, experience, and other factors under the state position classification plan;
- (6) Job description shall mean the description of duties, responsibilities, typical tasks to be performed, degree of supervision to which subject or for which responsible, and conditions under which an incumbent in a given position shall perform, for each class and position in the state service;
- (7) Pay grade shall mean a specified range of salary or wage, the starting and intermediate rates within such range, and the maximum rate of such range as may be approved by legislative enactment;
- (8) Position classification plan shall mean the system of classifying each position in the state service in accordance with the kinds of skills, experience, working conditions, and other factors peculiar to each and the structuring of classes of positions in accordance with the different kinds of treatment necessary for each class and the positions within each class;
- (9) Salary or pay plan shall mean a plan by which positions, as previously arranged under the classification plan, are evaluated by classes in relation to one another, by which pay grades are specified for each class of positions, and which is governed by a set of fundamental rules authorizing and controlling changes in the pay of classes of positions and their incumbents as may be provided for by law and rules and regulations promulgated pursuant to such law;
- (10) Fiscal year shall mean the twelve months between July 1 of one year and June 30 of the next succeeding year;
- (11) Biennium shall mean the twenty-four months between July 1 of each odd-numbered year and June 30 of the year following the next succeeding calendar year;
- (12) Qualified shall mean, with reference either to a candidate for employment or an employee, that he or she has been examined by appropriate means and found to possess the minimum ability and the minimum requirements of

training, experience, and other requirements for the position sought or held and may therefor be certified as eligible for employment in such position;

(13) Job specifications shall mean a formal statement of skills, experience, personal qualities, education, and other factors to be required of persons who hold or seek employment for each position in the state's service;

(14) Recruiting shall mean the act or actions through which potentially qualified persons are caused to apply for employment with any agency of the state;

(15) Classification shall mean the process by which the duties, responsibilities, working conditions, skills required, experience required, supervision received or exercised, or both, and other factors relative to a position are established in proper relationship to the same factors for all other positions in the state's service and from which there shall result a job description, job specifications, and assignment to a pay grade for the position so affected;

(16) Budget division shall mean the budget division of the Department of Administrative Services;

(17) Staffing pattern shall mean the number of positions in each class and the specific classes of positions as may be authorized for each department or agency of state government by the budget division;

(18) Authorized position shall mean any position the creation of which has been approved by the budget division;

(19) Merit increase shall mean any increase in the rate of pay for any position in the state's service beyond the starting rate and which shall be provided for by the pay plan and which shall be granted in recognition of length of service, superior or outstanding performance, or as otherwise provided for by law;

(20) Grievance shall mean a management action resulting in an injury, injustice, or wrong involving a misinterpretation or misapplication of rules promulgated by the personnel division or agency rules and regulations;

(21) Director shall mean the Director of Personnel; and

(22) Personnel division shall mean the personnel division of the Department of Administrative Services.

**Source:** Laws 1967, c. 573, § 2, p. 1886; Laws 1971, LB 1030, § 1; Laws 1986, LB 258, § 39; Laws 1987, LB 491, § 9; Laws 1992, Third Spec. Sess., LB 14, § 11; Laws 1997, LB 314, § 12.

**81-1303 Personnel division within the Department of Administrative Services; director; appointment.**

There is hereby established a division within the Department of Administrative Services to be known as the personnel division, to be headed by a Director of Personnel. The director shall be appointed by the Director of Administrative Services.

**Source:** Laws 1967, c. 573, § 3, p. 1889; Laws 1969, c. 802, § 4, p. 3022; Laws 1971, LB 1030, § 2; Laws 1992, Third Spec. Sess., LB 14, § 12.

**81-1304 Director of Personnel; qualifications.**

Any person who is a graduate of an accredited four-year college or university and who has at least five years of progressively responsible experience in

development and administration of a public or private personnel program, including responsibility for development and administration of company or agency policies, supervision of staff or programs, negotiations of personnel matters with other agencies or organizations and a demonstrated knowledge of public personnel administration, testing, classification, wage and salary administration, recruiting, certification, and modern office procedures may be appointed as Director of Personnel; *Provided*, that not more than two years' experience as a full-time paid faculty member with primary responsibilities for teaching in public or business administration, industrial engineering, sociology or psychology may be substituted for two of the five years' experience required; *and provided further*, that not more than one year of graduate training in one of the foregoing fields may be substituted for one year of experience.

**Source:** Laws 1967, c. 573, § 4, p. 1890; Laws 1971, LB 1030, § 3.

**81-1305 Director of Personnel; compensation.**

The compensation of the Director of Personnel shall be fixed by the Director of Administrative Services.

**Source:** Laws 1967, c. 573, § 5, p. 1890; Laws 1971, LB 1030, § 4; Laws 1992, Third Spec. Sess., LB 14, § 13.

**81-1306 Director of Personnel; employees.**

The Director of Personnel shall employ the necessary personnel to carry out the duties of the personnel division subject to the amount of funds appropriated for such purpose.

**Source:** Laws 1967, c. 573, § 6, p. 1890; Laws 1969, c. 802, § 5, p. 3022; Laws 1971, LB 1030, § 5; Laws 1992, Third Spec. Sess., LB 14, § 14.

**81-1307 Director of Personnel; duties.**

The Director of Personnel shall be responsible for the administration of the personnel division. Subject to the review powers of the State Personnel Board, the director shall be responsible for development of recommendations on personnel policy and for development of specific administrative systems and shall have the authority to adopt, promulgate, and enforce rules and regulations pertaining thereto. The director shall be responsible for specific administrative systems including, but not limited to, the following:

(1) Employment Services:

- (a) General employment policies and procedures;
- (b) Position classification plans;
- (c) Job descriptions;
- (d) Job specifications;
- (e) Salary or pay plans;
- (f) Staffing patterns; and

(g) Recruiting of qualified applicants for employment and the maintenance of qualified applicants for employment for all positions in state government;

(2) Personnel Records:

(a) A system of records and statistical reports containing general data on all employees, including current salary levels and such other information as may be required by the operating needs of state departments and agencies and the budget division; and

(b) Standards for the development and maintenance of personnel records to be maintained within operating departments of the state government;

(3) Personnel Management:

(a) Minimum standards for evaluation of employee efficiency and a system of regular evaluation of employee performance;

(b) Administrative guidelines governing such matters as hours of work, promotions, transfers, demotions, probation, terminations, reductions in force, salary actions, and other such matters as may not be otherwise provided for by law;

(c) Administrative policies and general procedural instructions for use by all state agencies relating to such matters as employee benefits, vacation, sick leave, holidays, insurance, sickness and accident benefits, and other employee benefits as the Legislature may from time to time prescribe; and

(d) A system of formally defined relationships between the personnel division and departments and agencies to be covered by the State Personnel System;

(4) Salary and Wage Survey: Measuring, through the use of surveys, the state's comparative level of employee compensation with the labor market;

(5) Staffing Patterns:

(a) Staffing patterns for each department and agency of state government that conform with those authorized by the budget division;

(b) Revisions to staffing patterns of all departments and agencies that have been approved by the budget division;

(c) Merit increases provided for any employee of the state that are the result of positive action by the appropriate supervisor; and

(d) The state's pay plan, as enacted by the Legislature, together with such amendments as may occur, is explained in appropriate handbooks for employees of the state;

(6) Temporary Employees:

(a) The director shall administer the Temporary Employee Pool containing applicants from which state agencies can draw when in need of a short-term labor supply; and

(b) State agencies must receive approval from the director before hiring any temporary employee; and

(7) Employee Recognition Program: The director shall administer an employee recognition program for state employees. The program shall serve as the authorized program for honoring state employees for dedicated and quality service to the government of the State of Nebraska.

**Source:** Laws 1967, c. 573, § 7, p. 1891; Laws 1969, c. 802, § 6, p. 3022; Laws 1971, LB 1030, § 6; Laws 1987, LB 491, § 10; Laws 1987, LB 661, § 32; Laws 1992, Third Spec. Sess., LB 14, § 15; Laws 1993, LB 44, § 12; Laws 1997, LB 314, § 13; Laws 1998, LB 1162, § 83.

**81-1307.01 Director of Personnel; salary survey; duties.**

The Director of Personnel shall measure, through the use of salary surveys, the competitive standing of state salaries with salary levels of the labor market. The State Personnel Board shall review the methodology and results of the survey. A report of the survey findings, including the board's review, shall be provided to the Legislature and the Governor along with the recommendations regarding wages, hours, and terms and conditions of employment for unorganized employees by the Chief Negotiator pursuant to section 81-1376. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 1987, LB 661, § 33; Laws 2012, LB782, § 197.

**81-1307.02 Legislature; salary survey; consideration.**

The Legislature shall consider the results of the salary survey and any recommendation from the Governor, Director of Personnel, or Chief Negotiator concerning unorganized state employee salary increases when making appropriations to state agencies. The Legislature shall attempt to provide an appropriate balance between assuring that all employees performing at a satisfactory level will receive appropriate salary increases and the need for administrative flexibility to reward those who perform at a superior level.

**Source:** Laws 1987, LB 661, § 34.

**81-1308 Repealed. Laws 1997, LB 5, § 5.****81-1309 Repealed. Laws 1997, LB 5, § 5.****81-1310 Repealed. Laws 1997, LB 5, § 5.****81-1311 Agency heads; management personnel; powers and duties.**

Agency heads and other management personnel so designated by the agency head shall have the following authorities and responsibilities, consistent with rules and regulations adopted and promulgated by the personnel division:

- (1) Decisions concerning the mission of the agency;
- (2) Decisions on how to maintain and improve the efficiency and effectiveness of government operations;
- (3) Decisions on services to be rendered, operations to be performed, technology to be utilized, or matters to be budgeted;
- (4) Decisions concerning the overall methods, processes, means, or personnel by which operations are to be conducted;
- (5) Decisions concerning the processes and acts of hiring, directing, or supervising employees;
- (6) Determining the performance evaluation rating of individual employees on at least an annual basis;
- (7) Employee salary administration decisions;
- (8) Assuring that position titles and job descriptions are accurate;
- (9) Decisions concerning employee job assignments, employee work schedules, promotions of employees, transfers of employees, and discipline of employees including terminations;
- (10) Decisions to reimburse the best qualified job applicants for travel, meals, and lodging expenses incurred in traveling to and from the prospective job site,

except that no more than three applicants for any position may be reimbursed under this subdivision;

(11) Decisions to relieve employees from duties because of lack of work or funds or under conditions when the employer determines continued work would be inefficient or nonproductive including the contracting out for goods and services;

(12) Decisions concerning development and maintenance of any personnel records necessary for the operation of the agency;

(13) Decisions to confer with any or all of its employees in the process of developing policies; and

(14) Decisions to take any other action not otherwise specified in this section.

**Source:** Laws 1967, c. 573, § 11, p. 1894; Laws 1971, LB 106, § 1; Laws 1971, LB 1030, § 8; Laws 1987, LB 491, § 12; Laws 1992, Third Spec. Sess., LB 14, § 16.

**81-1312 Director of Personnel; administration; delegation of powers; exempted agency; coverage; agreement.**

(1) The Director of Personnel may, for reasons of practical difficulties anticipated or experienced in the development of the state personnel service, in anticipation of practical problems during the transition to effective operation of the several technical aspects of the state personnel service by the staff of the personnel division by reason of existence of agency personnel offices which, in the judgment of the director, have adequate capability to undertake responsibilities for development of or administration of sections 81-1301 to 81-1316, or for the convenience of either the personnel division or the individual agencies of state government, or both, delegate responsibility for administration of any of the requirements of such sections to any department or agency. Such delegation shall be limited to the administration of such sections or of the policies, rules, and regulations promulgated under such sections as such provisions may affect the department or agency.

(2) The director may make such arrangements for the production, development, or maintenance of records and reports as may be necessary, relying for such arrangements on the facilities of other state agencies.

(3) Any position within any agency exempted from coverage by the Constitution of Nebraska or by sections 81-1301 to 81-1316 may be covered by the state personnel service through specific agreement between the exempted agency or the agency having responsibility for exempted positions and the personnel division.

**Source:** Laws 1967, c. 573, § 12, p. 1895; Laws 1971, LB 1030, § 9; Laws 1992, Third Spec. Sess., LB 14, § 17.

**81-1313 Repealed. Laws 1997, LB 314, § 29.**

**81-1314 Delegation of authority.**

Any official named in sections 81-1301 to 81-1317 shall have the power to delegate authority for execution of responsibilities under sections 81-1301 to 81-1317 to any person such official may designate.

**Source:** Laws 1967, c. 573, § 14, p. 1896.

**81-1315 Employees subject to sections; prohibited from political activities; when; disciplinary action.**

State employees subject to sections 81-1301 to 81-1316 shall be prohibited from participation in political activities during office hours or while otherwise engaged in the performance of official duties as employees of this state. Any employee violating this section shall be subject to disciplinary action under the rules and regulations adopted and promulgated pursuant to sections 81-1301 to 81-1328. Such disciplinary action may include demotion, dismissal, reduction of salary, or suspension.

**Source:** Laws 1967, c. 573, § 15, p. 1896; Laws 1987, LB 110, § 1; Laws 1997, LB 314, § 14.

**Cross References**

Other prohibitions and requirements relating to political activities, see section 20-160.

**81-1316 State Personnel System; exemptions.**

(1) All agencies and personnel of state government shall be covered by sections 81-1301 to 81-1319 and shall be considered subject to the State Personnel System, except the following:

- (a) All personnel of the office of the Governor;
- (b) All personnel of the office of the Lieutenant Governor;
- (c) All personnel of the office of the Secretary of State;
- (d) All personnel of the office of the State Treasurer;
- (e) All personnel of the office of the Attorney General;
- (f) All personnel of the office of the Auditor of Public Accounts;
- (g) All personnel of the Legislature;
- (h) All personnel of the court systems;
- (i) All personnel of the Board of Educational Lands and Funds;
- (j) All personnel of the Public Service Commission;
- (k) All personnel of the Nebraska Brand Committee;
- (l) All personnel of the Commission of Industrial Relations;
- (m) All personnel of the State Department of Education;
- (n) All personnel of the Nebraska state colleges and the Board of Trustees of the Nebraska State Colleges;
- (o) All personnel of the University of Nebraska;
- (p) All personnel of the Coordinating Commission for Postsecondary Education;
- (q) All personnel of the Governor's Policy Research Office, but not to include personnel within the State Energy Office;
- (r) All personnel of the Commission on Public Advocacy;
- (s) All agency heads;
- (t)(i) The Director of Behavioral Health of the Division of Behavioral Health;
- (ii) the Director of Children and Family Services of the Division of Children and Family Services; (iii) the Director of Developmental Disabilities of the Division of Developmental Disabilities; (iv) the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care; (v) the Director of Public

Health of the Division of Public Health; and (vi) the Director of Veterans' Homes of the Division of Veterans' Homes;

(u) The chief medical officer established under section 81-3115, the Administrator of the Office of Juvenile Services, and the chief executive officers of the Beatrice State Developmental Center, Lincoln Regional Center, Norfolk Regional Center, Hastings Regional Center, Grand Island Veterans' Home, Norfolk Veterans' Home, Eastern Nebraska Veterans' Home, Western Nebraska Veterans' Home, Youth Rehabilitation and Treatment Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;

(v) The chief executive officers of all facilities operated by the Department of Correctional Services and the medical director for the department appointed pursuant to section 83-4,156;

(w) All personnel employed as pharmacists, physicians, psychiatrists, or psychologists by the Department of Correctional Services;

(x) All personnel employed as pharmacists, physicians, psychiatrists, psychologists, service area administrators, or facility operating officers of the Department of Health and Human Services;

(y) Deputies and examiners of the Department of Banking and Finance and the Department of Insurance as set forth in sections 8-105 and 44-119, except for those deputies and examiners who remain in the State Personnel System; and

(z) All personnel of the Tax Equalization and Review Commission.

(2) At each agency head's discretion, up to the following number of additional positions may be exempted from the State Personnel System, based on the following agency size categories:

Number of Agency Employees	Number of Noncovered Positions
less than 25	0
25 to 100	1
101 to 250	2
251 to 500	3
501 to 1000	4
1001 to 2000	5
2001 to 3000	8
3001 to 4000	11
4001 to 5000	14
over 5000	50

The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head. An agency with over five thousand employees shall provide notice in writing to the Health and Human Services Committee of the Legislature when forty noncovered positions have been filled by the agency head pursuant to this subsection.

(3) No changes to this section or to the number of noncovered positions within an agency shall affect the status of personnel employed on the date the

changes become operative without their prior written agreement. A state employee's career protections or coverage by personnel rules and regulations shall not be revoked by redesignation of the employee's position as a noncovered position without the prior written agreement of such employee.

**Source:** Laws 1967, c. 573, § 16, p. 1896; Laws 1969, c. 802, § 8, p. 3025; Laws 1971, LB 637, § 1; Laws 1987, LB 491, § 13; Laws 1988, LB 1106, § 1; Laws 1996, LB 1044, § 867; Laws 1998, LB 1073, § 165; Laws 2000, LB 654, § 41; Laws 2002, LB 876, § 86; Laws 2002, LB 1062, § 65; Laws 2003, LB 85, § 3; Laws 2003, LB 245, § 16; Laws 2006, LB 994, § 114; Laws 2007, LB296, § 756; Laws 2008, LB745, § 1; Laws 2008, LB965, § 23; Laws 2011, LB218, § 1.

**Cross References**

For other exemptions, see sections 49-14,121 and 72-1242.

**81-1317 Director; adjust terms and conditions of employment; employees not covered by collective-bargaining agreements.**

Except as may be prohibited by the Industrial Relations Act or the State Employees Collective Bargaining Act and except for the pay increases provided by the Legislature, the Director of Personnel shall have authority to establish programs and otherwise adjust terms and conditions of employment for employees not covered by collective-bargaining agreements, including terms and conditions of employment which may not be specifically provided or may otherwise be provided by law, in order to make such terms and conditions of employment more consistent with those of such covered employees or otherwise address changes arising out of collective bargaining, but in no event shall the adjustment exceed the benefits derived from collective bargaining.

**Source:** Laws 1988, LB 1040, § 3; Laws 1989, LB 309, § 2; Laws 1990, LB 1125, § 1; Laws 1991, LB 502, § 1; Laws 1993, LB 697, § 3; Laws 1995, LB 395, § 1; Laws 1997, LB 314, § 15; Laws 1999, LB 113, § 5; Laws 2001, LB 96, § 3.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

**State Employees Collective Bargaining Act**, see section 81-1369.

**81-1317.01 Terms and conditions of employment; employees not covered under State Personnel System; adjustments.**

Except for employees of the University of Nebraska and the state colleges and except as may be prohibited by the Industrial Relations Act or the State Employees Collective Bargaining Act, terms and conditions of employment which may otherwise be provided by law for employees not covered under the State Personnel System may be adjusted by the employer-representative as defined in section 81-1371 to address changes arising out of collective bargaining, but in no event shall the adjustment exceed the benefits derived from collective bargaining.

**Source:** Laws 1988, LB 1040, § 4; Laws 1989, LB 309, § 3; Laws 1990, LB 1125, § 2; Laws 1991, LB 502, § 2; Laws 1993, LB 697, § 4; Laws 1995, LB 395, § 2; Laws 1997, LB 314, § 16; Laws 1999, LB 113, § 6; Laws 2001, LB 96, § 4.

## Cross References

Industrial Relations Act, see section 48-801.01.

State Employees Collective Bargaining Act, see section 81-1369.

**81-1318 State Personnel Board; created; members; appointment; term; powers.**

There is hereby created a State Personnel Board composed of five persons appointed by the Governor subject to confirmation by the Legislature. Not more than three of the members shall be members of the same political party. Each board member shall retain his or her position until resignation or until a successor is appointed at the expiration of the member's appointive term. Any member of the board may be removed by the Governor, upon notice and hearing as determined by the Governor, for neglect of duty or malfeasance in office, but for no other cause. New members shall be appointed for terms of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member succeeded. State employees covered by sections 81-1301 to 81-1319 shall not be appointed to the State Personnel Board. At least three appointees to the board shall have experience in personnel administration, business or public administration, labor relations, or law. The board, by majority vote, shall designate one member to serve as chairperson. The principal office and business address of the board shall be the personnel division of the Department of Administrative Services in Lincoln, Nebraska, but the board may meet and exercise any or all of its powers at any other location.

The board may delegate to a group of three or more members any or all of the powers which it may exercise. The board shall be authorized to designate and delegate its powers under section 81-1318.01 to hearing officers to conduct grievance appeal hearings and recommend a decision to the board for final action. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and three members of the board shall at all times constitute a quorum of the board.

**Source:** Laws 1969, c. 802, § 9, p. 3026; Laws 1979, LB 322, § 54; Laws 1981, LB 545, § 35; Laws 1987, LB 491, § 14; Laws 1992, Third Spec. Sess., LB 14, § 18; Laws 1997, LB 314, § 17.

**81-1318.01 State Personnel Board; duties.**

The State Personnel Board shall ensure the fair and equitable administration of the State Personnel System by:

- (1) Operating as prescribed by rules and regulations adopted and promulgated by the personnel division of the Department of Administrative Services;
- (2) Reviewing and approving, by majority vote, rules and regulations adopted and promulgated by the personnel division;
- (3) Determining the grievability of issues or doing so through the designation of a board member. Issues determined to be not grievable shall be subject to summary dismissal;
- (4) Adjudicating grievance appeals and rendering final binding decisions;
- (5) Rendering decisions consistent with the rules and regulations adopted and promulgated by the personnel division;
- (6) Reviewing and providing counsel regarding any matter affecting the State Personnel System; and

(7) Performing the actions required pursuant to the State Government Effectiveness Act.

**Source:** Laws 1987, LB 491, § 15; Laws 1992, Third Spec. Sess., LB 14, § 19; Laws 1993, LB 44, § 14.

**Cross References**

State Government Effectiveness Act, see section 81-2701.

**81-1318.02 State Personnel Board; grievance appeal; procedure; hearing officer; qualifications.**

Any employee appealing a ruling made pursuant to Chapter 81, article 13, shall file a grievance appeal with the State Personnel Board. The chairperson of the board may assign the appeal to a hearing officer who shall be chosen from a list of hearing officers established and maintained by the board. The board shall establish the qualifications necessary to be a hearing officer. Such qualifications shall be consistent with experience in personnel administration, labor relations, or administrative law proceedings. Persons eligible to be hearing officers shall include (1) employees of the personnel division of the Department of Administrative Services, (2) employees of the Division of Employee Relations of the Department of Administrative Services, (3) employees included within the State Personnel System who the board determines are qualified, and (4) other qualified persons, except that no person who has negotiated or assisted in the negotiation of the contract at issue shall be eligible to be a hearing officer.

After the chairperson of the State Personnel Board assigns the grievance appeal to a hearing officer, the appellant may disapprove such assignment and request that another person be assigned as his or her hearing officer. The second assignment shall be final.

**Source:** Laws 1987, LB 491, § 16; Laws 1992, Third Spec. Sess., LB 14, § 20.

**81-1319 Board; appeal; procedure.**

Appeal from the decision of the State Personnel Board shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 802, § 10, p. 3026; Laws 1987, LB 19, § 4; Laws 1988, LB 352, § 173.

**Cross References**

Administrative Procedure Act, see section 84-920.

State Administrative Procedures Act does not limit right of review to appeal procedure therein. *Lanc v. Douglas County Welfare Administration*, 189 Neb. 651, 204 N.W.2d 387 (1971).

**81-1320 Permanent state employees; sick leave; schedule.**

Permanent employees of the State of Nebraska shall be entitled to sick leave with full pay computed at the rate of eight work hours per month for each calendar month of service. Those employees who have completed five or more years of service shall be entitled to one hundred thirty-six hours of sick leave during their sixth year of employment and shall thereafter be entitled to an additional eight hours of sick leave for each year of service not to exceed two hundred forty hours per calendar year. Sick leave shall be earned in accordance with the following schedule:

During 1st year of continuous employment .....	96 hours per year
During 2nd year of continuous employment .....	96 hours per year
During 3rd year of continuous employment .....	96 hours per year
During 4th year of continuous employment .....	96 hours per year
During 5th year of continuous employment .....	96 hours per year
During 6th year of continuous employment .....	136 hours per year
During 7th year of continuous employment .....	144 hours per year
During 8th year of continuous employment .....	152 hours per year
During 9th year of continuous employment .....	160 hours per year
During 10th year of continuous employment .....	168 hours per year
During 11th year of continuous employment .....	176 hours per year
During 12th year of continuous employment .....	184 hours per year
During 13th year of continuous employment .....	192 hours per year
During 14th year of continuous employment .....	200 hours per year
During 15th year of continuous employment .....	208 hours per year
During 16th year of continuous employment .....	216 hours per year
During 17th year of continuous employment .....	224 hours per year
During 18th year of continuous employment .....	232 hours per year
During 19th year of continuous employment and thereafter .....	240 hours per year;

*Provided*, that employees who are regularly employed less than forty hours a week shall be entitled to sick leave proportionate to their regular workweek; *and provided further*, that any employee who has been employed by the Legislature or Legislative Council shall, for sick leave entitlement purposes, be credited with one continuous year of employment for each two hundred sixty working days such employee was employed by the Legislature or Legislative Council.

**Source:** Laws 1973, LB 340, § 1.

**81-1321 State employee, defined.**

As used in sections 81-1320 to 81-1326, state employee shall mean any person or officer employed by the state including the head of any department or agency, except when such head is a board or commission, and who works a full-time or part-time schedule on an ongoing basis.

**Source:** Laws 1973, LB 340, § 2; Laws 1974, LB 1003, § 1; Laws 1997, LB 314, § 18.

**81-1322 State employee; terminated; returns within one year; sick leave computed; exceptions.**

For the purpose of sections 81-1320 to 81-1326, any state employee whose employment has been terminated, for other than disciplinary reasons, and who returns to state employment within one year from the date of such termination shall have his or her service for sick leave entitlement computed by combining prior continuous service with current continuous service disregarding such period of absence and shall have reinstated to his or her sick leave account all

earned sick leave not used at the time of his or her departure, except that any employee who has retired or voluntarily terminated in lieu of retirement shall, if he or she returns to state employment, be considered a new employee for the purpose of sick leave entitlement.

**Source:** Laws 1973, LB 340, § 3; Laws 1974, LB 1003, § 2; Laws 1997, LB 314, § 19.

**81-1323 Sick leave account; balanced as of December 31 each year.**

The sick leave account shall be balanced as of 11:59 p.m. Central Standard Time on December 31 each calendar year. Sick leave shall be cumulative for not more than one thousand four hundred forty hours.

**Source:** Laws 1973, LB 340, § 4; Laws 1993, LB 697, § 5.

**81-1324 Sick leave; termination.**

All sick leave shall expire on the date of separation and no employee shall be reimbursed for sick leave outstanding at the time of termination except as provided in sections 81-1320 to 81-1326.

**Source:** Laws 1973, LB 340, § 5; Laws 1997, LB 314, § 20.

**81-1325 Employee; retirement; death; payment for unused sick leave benefits.**

Each employee who meets the minimum age and service requirements for retirement under any existing state or federal retirement system shall, upon termination of employment with the state by reason of retirement or voluntary resignation in lieu of retirement, be entitled to a one-time payment of one-fourth of his or her accumulated unused sick leave, with the rate of payment based upon his or her regular pay at the time of termination or retirement. Upon the death of an employee, his or her beneficiary shall be paid one-fourth of his or her accumulated unused sick leave, with the rate of payment based upon his or her regular pay at the date of death.

**Source:** Laws 1973, LB 340, § 6; Laws 1974, LB 1003, § 3; Laws 1986, LB 325, § 14; Laws 1986, LB 311, § 23.

**81-1326 Permanent employee; transferred to another agency; sick leave transferred.**

A permanent employee who is transferred from one agency to another shall have his accrued sick leave transferred to the receiving agency.

**Source:** Laws 1973, LB 340, § 7.

**81-1327 World Day on the Mall Cash Fund; created; use; investment.**

The World Day on the Mall Cash Fund is created. The fund shall consist of sums that are contributed as gifts, donations, grants, or bequests to provide multicultural or diversity education, training, and events. The fund shall be used by the personnel division of the Department of Administrative Services for the administration of multicultural or diversity education, training, and events. 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 2012, LB969, § 13.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1328 State employees; vacation time; schedule.**

State employees shall, during each year of continuous employment, be entitled to ninety-six working hours of vacation leave with full pay.

State employees who complete five years of continuous employment by the state shall be entitled to one hundred twenty hours of vacation leave during their sixth year of employment and shall thereafter be entitled to eight additional hours of vacation leave with full pay for each additional year of continuous state employment up to a maximum of two hundred hours of vacation leave a year. Vacation leave shall be earned in accordance with the following schedule:

During 1st year of continuous employment . . . . .	96 hours per year
During 2nd year of continuous employment . . . . .	96 hours per year
During 3rd year of continuous employment . . . . .	96 hours per year
During 4th year of continuous employment . . . . .	96 hours per year
During 5th year of continuous employment . . . . .	96 hours per year
During 6th year of continuous employment . . . . .	120 hours per year
During 7th year of continuous employment . . . . .	128 hours per year
During 8th year of continuous employment . . . . .	136 hours per year
During 9th year of continuous employment . . . . .	144 hours per year
During 10th year of continuous employment . . . . .	152 hours per year
During 11th year of continuous employment . . . . .	160 hours per year
During 12th year of continuous employment . . . . .	168 hours per year
During 13th year of continuous employment . . . . .	176 hours per year
During 14th year of continuous employment . . . . .	184 hours per year
During 15th year of continuous employment . . . . .	192 hours per year
During 16th year of continuous employment . . . . .	200 hours per year
After 16th year of continuous employment . . . . .	200 hours per year

Employees who are regularly employed less than forty hours a week shall be entitled to vacation leave proportionate to their regular workweek. Any employee who has been employed by the Legislature or Legislative Council shall, for vacation leave entitlement purposes, be credited with one continuous year of employment for each two hundred sixty working days such employee was employed by the Legislature or Legislative Council.

As used in this section, state employee shall mean any person or officer employed by the state including the head of any department or agency, except when such a head is a board or commission, and who works a full-time or part-time schedule on an ongoing basis.

For purposes of this section, an employee who has terminated employment with the state for any reason other than disciplinary and who returns to state employment within one year from the date of termination shall have his or her

service for vacation leave entitlement computed by combining prior continuous service with current continuous service disregarding the period of absence, except that an employee who has retired or voluntarily terminated in lieu of retirement shall, if he or she returns to state employment, be considered a new employee for the purpose of vacation leave entitlement.

The vacation leave account of each employee shall be balanced as of 11:59 p.m. Central Standard Time on December 31 each calendar year. Each employee shall be entitled to have accumulated as of such time the number of hours of vacation leave which he or she earned during that calendar year. Hours of vacation leave accumulated in excess of that number shall be lost. Any employee shall be entitled to use any vacation time as soon as it has accrued. Any vacation time not used within one calendar year following the calendar year during which the time accrued shall be lost. In special and meritorious cases, when to limit the annual leave to the period therein specified would work a peculiar hardship, such leave may be extended in the discretion of the Governor, or in situations involving employees of the Legislature, in the discretion of the Executive Board of the Legislative Council.

Each employee, upon retirement, dismissal, or voluntary separation from state employment, shall be paid for unused accumulated vacation leave. Upon the death of an employee, his or her beneficiary shall be paid for unused accumulated vacation leave.

A permanent employee who is transferred from one agency to another shall have his or her accrued vacation leave transferred to the receiving agency.

The Director of Personnel shall adopt and promulgate such rules and regulations as are necessary to administer this section.

**Source:** Laws 1973, LB 469, § 1; Laws 1974, LB 890, § 1; Laws 1993, LB 697, § 6.

**81-1328.01 Repealed. Laws 1997, LB 314, § 29.**

**81-1328.02 Repealed. Laws 1997, LB 314, § 29.**

**81-1328.03 Repealed. Laws 1997, LB 314, § 29.**

**81-1329 Repealed. Laws 1997, LB 314, § 29.**

**81-1330 Repealed. Laws 1997, LB 314, § 29.**

**81-1331 Repealed. Laws 1997, LB 314, § 29.**

**81-1332 Repealed. Laws 1997, LB 314, § 29.**

**81-1333 Repealed. Laws 1997, LB 314, § 29.**

**81-1334 Repealed. Laws 1997, LB 314, § 29.**

**81-1335 Repealed. Laws 1987, LB 661, § 39.**

**81-1336 Repealed. Laws 1987, LB 661, § 39.**

**81-1337 Repealed. Laws 1987, LB 661, § 39.**

**81-1338 Repealed. Laws 1987, LB 661, § 39.**

**81-1339 Repealed. Laws 1987, LB 661, § 39.**

**81-1340 Repealed. Laws 1987, LB 661, § 39.**

**81-1341 Repealed. Laws 1987, LB 661, § 39.**

**81-1341.01 Repealed. Laws 1989, LB 309, § 6.**

**81-1341.02 Repealed. Laws 1988, LB 1040, § 6.**

**81-1341.03 Repealed. Laws 1989, LB 309, § 6.**

**81-1342 Repealed. Laws 1978, LB 946, § 15.**

**81-1343 Repealed. Laws 1978, LB 946, § 15.**

**81-1344 Repealed. Laws 1978, LB 946, § 15.**

**81-1345 Repealed. Laws 1987, LB 661, § 39.**

**81-1346 Employee suggestion system program; established; purpose; applicability.**

There is hereby established a program to be known as the employee suggestion system to encourage the development of ideas for improving the economy and efficiency of state government and to grant awards for ideas of proper merit and implement them in the governmental process. The employee suggestion system shall apply to all state personnel except those personnel listed in subdivisions (1)(n), (o), and (s) of section 81-1316, any judge, or any elected official.

**Source:** Laws 1978, LB 286, § 1; Laws 2007, LB5, § 1.

**81-1347 Employee suggestion system; Director of Personnel; adopt rules and regulations.**

The Director of Personnel or such director's designated representative is hereby directed to develop and adopt rules and regulations in accordance with sections 81-1346 to 81-1354 for the administration of an employee suggestion system. Consideration of a suggestion shall begin when an eligible employee contacts the director or the director's designated representative with a qualifying suggestion. The employee shall supply and the director or the director's designated representative shall record the employee's name, the date and exact time of day the suggestion is submitted, and a brief description of the suggestion. The names of employees who make suggestions shall be kept confidential unless the employee is granted an award under sections 81-1346 to 81-1354.

**Source:** Laws 1978, LB 286, § 2; Laws 2003, LB 307, § 1.

**81-1347.01 Employee suggestion system; annual report.**

The Director of Personnel shall prepare and annually transmit a report detailing the operations of the employee suggestion system, including an accounting of all awards granted, whether the accepted suggestions were implemented, the number of suggestions submitted, and the number of suggestions declined. The reason for declining each suggestion that is declined shall be recorded.

**Source:** Laws 1993, LB 44, § 17; Laws 2003, LB 307, § 2.

**81-1348 Suggestion Award Board; created; membership; expenses; rules and regulations.**

There is hereby created the Suggestion Award Board. The membership of such board shall consist of the Director of Personnel, the Director of Administrative Services, the Auditor of Public Accounts, and three persons, each to serve a term of three years, selected and appointed by the Governor from the bargaining units listed in section 81-1373, except that the first three appointments made after February 23, 2000, shall be for terms of one year, two years, and three years, as designated by the Governor. Of the persons selected from such bargaining units, one person shall be selected from each of such bargaining units as follows:

(1) The first term from the bargaining units listed in subdivisions (1)(a), (b), and (l) of such section;

(2) The second term from the bargaining units listed in subdivisions (1)(c), (d), and (g) of such section;

(3) The third term from the bargaining units listed in subdivisions (1)(e), (f), and (h) of such section; and

(4) The fourth term from the bargaining units listed in subdivisions (1)(i), (j), and (k) of such section.

After the fourth term, the appointments shall be made starting from subdivision (1) of this section and following the same sequence.

Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the same bargaining unit in which the vacancy exists.

The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

The board shall adopt and promulgate rules and regulations to aid in carrying out sections 81-1350 and 81-1351.

**Source:** Laws 1978, LB 286, § 3; Laws 1993, LB 44, § 15; Laws 1995, LB 395, § 3; Laws 2000, LB 654, § 42.

**81-1349 Repealed. Laws 1981, LB 545, § 52.****81-1350 Employee suggestion system; award granted; amount.**

Any award granted shall be the greater of one hundred dollars or ten percent of the amount of savings referred to in section 81-1353 but not to exceed the limitations provided for in section 81-1351.

**Source:** Laws 1978, LB 286, § 5; Laws 1993, LB 44, § 16; Laws 2007, LB5, § 2.

**81-1351 Employee suggestion system; award granted; limitations.**

Any award granted under the provisions of sections 81-1346 to 81-1354 shall be limited to six thousand dollars unless a larger award is recommended by resolution of the Legislature.

**Source:** Laws 1978, LB 286, § 6; Laws 2007, LB5, § 3.

**81-1352 Employee suggestion system; approved suggestions; warrants; issued by State Treasurer.**

Notwithstanding any other provisions of law, the State Treasurer shall issue warrants to employees for approved suggestions in accordance with sections 81-1346 to 81-1354.

**Source:** Laws 1978, LB 286, § 7.

**81-1353 Employee suggestion system; awards; paid from appropriated money saved.**

No agency, board, or commission shall receive additional appropriations to carry out sections 81-1346 to 81-1354 except the personnel division of the Department of Administrative Services which shall be allocated funds to administer such sections. All awards shall be made from the amount of appropriated money saved by the suggestions of employees.

**Source:** Laws 1978, LB 286, § 8; Laws 1992, Third Spec. Sess., LB 14, § 23.

**81-1354 Employee suggestion system; suggestions; ineligible for award.**

No employee making a suggestion that requires legislative enactment or concerns policies already implemented or which are in the process of implementation by the agency shall be eligible for an award under sections 81-1346 to 81-1354.

**Source:** Laws 1978, LB 286, § 9; Laws 2003, LB 307, § 3.

**81-1354.01 Employee rights; not restricted.**

Nothing in sections 81-1301 to 81-1354 shall prohibit state employees from exercising their rights granted in Chapter 48, article 8, or any other applicable sections of law.

**Source:** Laws 1987, LB 491, § 11.

**81-1354.02 Repealed. Laws 2000, LB 654, § 57.**

**81-1354.03 Training Revolving Fund; created; investment.**

There is hereby created the Training Revolving Fund to be administered by the personnel division of the Department of Administrative Services. All funds received by the personnel division for employee training programs shall be remitted by the personnel division to the State Treasurer for credit to 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 1994, LB 1006, § 1; Laws 1995, LB 7, § 123.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1354.04 Temporary Employee Pool Revolving Fund; created; use; investment.**

There is hereby created the Temporary Employee Pool Revolving Fund. The fund shall be administered by the personnel division of the Department of Administrative Services. The fund shall consist of fees paid for services provided to state agencies by the division in providing temporary employees. The fund

shall be used to pay for expenses incurred by the division in providing temporary employees.

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, § 4; Laws 1995, LB 7, § 124.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1354.05 Personnel Division Revolving Fund; created; use; investment.**

The Personnel Division Revolving Fund is created. The fund shall be administered by the personnel division of the Department of Administrative Services. All funds received by the personnel division for employee recognition programs and advertising shall be credited to 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 Employee Recognition Revolving Fund on July 1, 2000, shall be transferred to the Personnel Division Revolving Fund.

**Source:** Laws 2000, LB 654, § 36.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

(b) AFFIRMATIVE ACTION PROGRAM

**81-1355 Public policy; equal employment opportunity.**

It is declared to be in the best interest of the State of Nebraska to insure that historic and any present patterns of sex and racial discrimination are eliminated and that each agency pursue a course of action in all areas of its operation to insure that all citizens are provided with fair and equal opportunities for employment and advancement regardless of race, color, religion, national origin, age, sex, marital status, or physical or mental disability.

Affirmative action shall be taken to insure the implementation of a policy in state government employment which provides equal employment opportunity. Such policy shall apply to:

- (1) Hiring, placement, upgrading, transfer, or demotion of employees;
- (2) Recruitment, advertising, or solicitation for employment;
- (3) Treatment during employment;
- (4) Rates of pay or other forms of compensation;
- (5) Selection for training;
- (6) Layoff, termination, or reinstatement; and
- (7) Any other terms or conditions of employment.

**Source:** Laws 1979, LB 500, § 1; Laws 1987, LB 491, § 17.

**81-1356 Terms, defined.**

As used in sections 81-1355 to 81-1368, unless the context otherwise requires:

(1) Equal employment opportunity shall mean the right of all persons to work and to advance on the basis of merit and ability without regard to race, color, religion, national origin, age, sex, marital status, or physical or mental disability;

(2) Affirmative action shall mean a deliberate and sustained effort to identify and eliminate barriers to employment and advancement which may discriminate against various groups. Particular emphasis shall be focused on racial minorities, women, and the disabled but not to the exclusion of the criteria set forth in subdivision (1) of this section. The ultimate goal is to achieve, at all levels, a state government work force which is representative of the state working population. The composition of the state working population shall be determined annually through reports of the Department of Labor. Such a goal is to be an integral part of every aspect of personnel policy;

(3) Office shall mean the Affirmative Action Office;

(4) Program shall mean the Affirmative Action Program;

(5) Agency shall mean each department, agency, office, board, commission, and committee of the State of Nebraska under the executive authority of the Governor;

(6) Plan shall mean the Affirmative Action Plan prepared by the individual agencies; and

(7) Administrator shall mean the Affirmative Action Administrator.

**Source:** Laws 1979, LB 500, § 2; Laws 1987, LB 491, § 18.

#### **81-1357 Affirmative Action Office; created.**

There is hereby created the Affirmative Action Office which shall be within the personnel division of the Department of Administrative Services. The office shall be under the administrative control of the Director of Personnel.

**Source:** Laws 1979, LB 500, § 3; Laws 1992, Third Spec. Sess., LB 14, § 24.

#### **81-1358 Affirmative Action Office; employees.**

The Affirmative Action Office shall consist of such employees as may be necessary to carry out the purposes of sections 81-1355 to 81-1368.

**Source:** Laws 1979, LB 500, § 4.

#### **81-1359 Affirmative Action Administrator; selection.**

The Affirmative Action Administrator shall be selected by the Director of Personnel.

**Source:** Laws 1979, LB 500, § 5; Laws 1987, LB 491, § 19.

#### **81-1360 Affirmative Action Administrator; duties; enumerated.**

The administrator shall be the head of the office. The administrator shall be given all necessary top management support to insure that there is compliance with Nebraska's program and shall be provided with sufficient staff and budget support to carry out the duties of the office. The administrator shall:

(1) Have the authority and responsibility for coordinating, directing, and implementing the program;

(2) Adopt and promulgate rules and regulations for the implementation of the agencies' plans;

(3) Provide counseling and technical assistance to the agencies in the development of their plans;

(4) Review agency plans and direct modification to insure the effectiveness of the plans and their compliance with the program;

(5) Monitor the progress of agency plans by establishing reporting forms as required by the program;

(6) Review the quarterly reports of the agencies;

(7) Monitor the progress of the program and report quarterly to the Governor;

(8) Make formal recommendations for legislation, when necessary, in order to make changes in the program;

(9) Serve as liaison between the state and federal compliance agencies;

(10) Plan, coordinate, and conduct training in equal employment opportunity, racial awareness, and concerns of women, the disabled, and aging for all segments of the state government work force;

(11) Coordinate the activities of the agency affirmative action individual in each agency;

(12) Investigate any complaints involving unfair treatment, terms and conditions of employment, or perceived acts or policies involving discrimination;

(13) Conduct contract compliance reviews on all vendors, grantees, and contractors who have programs or projects which are funded in whole or in part by state funds; and

(14) Coordinate the Disadvantage Business Enterprise and Women Business Enterprise programs which are funded in whole or in part by state or federal funds.

**Source:** Laws 1979, LB 500, § 6; Laws 1987, LB 491, § 20; Laws 2012, LB782, § 198; Laws 2013, LB222, § 36.

**81-1361 Agency; plan; submit; update.**

Each agency shall submit a plan for that agency to the office for review and shall work with the administrator to insure effectiveness of the plan. Each agency shall annually update its plan based on guidelines developed by the administrator.

**Source:** Laws 1979, LB 500, § 7; Laws 1987, LB 491, § 21; Laws 2013, LB78, § 18.

**81-1362 Agency affirmative action individual; appointed.**

The head of each agency with more than ten employees shall appoint at least one individual as agency affirmative action individual for the agency to coordinate equal employment and affirmative action efforts with the office.

**Source:** Laws 1979, LB 500, § 8.

**81-1363 Repealed. Laws 2013, LB 78, § 23.**

**81-1364 Repealed. Laws 2013, LB 78, § 23.**

**81-1365 Repealed. Laws 2013, LB 78, § 23.**

**81-1366 Repealed. Laws 2013, LB 78, § 23.**

**81-1367 Affirmative action; cooperation.**

Each agency shall cooperate with the administrator in the performance of his or her duties. The efforts, activities, and results of all directors, managers, and supervisors shall be used in their work-performance evaluations. Directors, managers, and supervisors shall be obligated to prevent harassment of employees involved in the implementation of plans and those hired through affirmative action efforts.

**Source:** Laws 1979, LB 500, § 13; Laws 1987, LB 491, § 22.

**81-1368 Agency plan; reviewed; noncompliance; effect; report.**

Each agency plan shall be reviewed by the office and approved or disapproved after submission. In every case when noncompliance is indicated, efforts shall be made to secure compliance through a corrective action plan. A specific commitment shall be put forth in writing. The commitment shall indicate the precise action to be taken and dates for completion. The time period allowed shall be no longer than thirty calendar days to effect the desired change. If an agency's plan does not comply with the rules and regulations adopted and promulgated by the office or if the agency's goals and timetables are not being met, the office shall meet with the director of the agency to discuss the deficiencies. Agency directors shall take responsibility for all noncompliance within their particular agency. In all cases when such corrective action plan does not resolve the noncompliance, the office shall report such noncompliance to the Governor. Such report shall be in writing and shall be made available to the news media at the same time that it is submitted to the Governor. The Governor shall take appropriate action to resolve the noncompliance elements and issues which were cited by the office.

**Source:** Laws 1979, LB 500, § 14; Laws 1987, LB 491, § 23; Laws 2013, LB78, § 19.

#### (c) STATE EMPLOYEES COLLECTIVE BARGAINING ACT

**81-1369 Act, how cited.**

Sections 81-1369 to 81-1388 shall be known and may be cited as the State Employees Collective Bargaining Act.

**Source:** Laws 1987, LB 661, § 1; Laws 2011, LB397, § 19.

**81-1370 Legislative findings; purpose of act.**

The Legislature hereby finds and declares that it is the public policy of this state and the purpose of the State Employees Collective Bargaining Act to promote harmonious, peaceful, and cooperative relationships between state government and its employees and to protect the public by assuring effective and orderly operations of government. Such policy is best effectuated by (1) recognizing the right of state employees in bargaining units to organize for the purpose of collective bargaining and (2) requiring state employees represented by an exclusive collective-bargaining agent to negotiate with and enter into written agreements with the Chief Negotiator of the Division of Employee

Relations or any other negotiator hired by an employer-representative on matters of wages, hours, and other terms and conditions of employment.

**Source:** Laws 1987, LB 661, § 2.

Where a new right is afforded by statute, one who desires such a statutory right must bring himself or herself within the provision of the statute. *State Code Agencies Ed. Assn. v. State*, 231 Neb. 23, 434 N.W.2d 684 (1989).

### **81-1371 Terms, defined.**

For purposes of the State Employees Collective Bargaining Act, unless the context otherwise requires:

(1) Chief Negotiator shall mean the Chief Negotiator of the Division of Employee Relations of the Department of Administrative Services;

(2) Commission shall mean the Commission of Industrial Relations;

(3) Division shall mean the Division of Employee Relations of the Department of Administrative Services;

(4) Employee or state employee shall mean any employee of the State of Nebraska;

(5) Employer or state employer shall mean the State of Nebraska and shall not include any political subdivision thereof;

(6) Employer-representative shall mean (a) for negotiations involving employees of the University of Nebraska, the Board of Regents, (b) for negotiations involving employees of the Nebraska state colleges, the Board of Trustees of the Nebraska State Colleges, (c) for negotiations involving employees of other constitutional agencies, the governing officer or body for each such agency, and (d) for negotiations involving other state employees, the Governor;

(7) Grievance shall mean a management action resulting in an injury, injustice, or wrong involving a misinterpretation or misapplication of applicable labor contracts if so agreed to by the appropriate parties;

(8) Issue shall mean broad subjects of negotiation which are presented to the commission pursuant to section 81-1382. All aspects of wages shall be a single issue, all aspects of insurance shall be a single issue, and all other subjects of negotiations classified in broad categories shall be single issues;

(9) Mandatory topic or topics of bargaining shall mean those subjects of negotiation on which employers must negotiate pursuant to the Industrial Relations Act, including terms and conditions of employment which may otherwise be provided by law for state employees, except when specifically prohibited by law from being a subject of bargaining; and

(10) Meet-and-confer rights shall mean the rights of employees to discuss wages, hours, and other terms and conditions of employment with the appropriate employer-representative but shall not require either party to enter into a written agreement. Employees afforded meet-and-confer rights shall not be entitled to utilize the impasse resolution procedures provided in the State Employees Collective Bargaining Act or to file a petition with the commission invoking its jurisdiction as provided in the Industrial Relations Act for the purpose of obtaining an order or orders under section 48-818. Meet-and-confer rights shall not apply to any bargaining unit other than a supervisory unit.

**Source:** Laws 1987, LB 661, § 3; Laws 1992, Third Spec. Sess., LB 14, § 25; Laws 2011, LB397, § 20.

## Cross References

**Industrial Relations Act**, see section 48-801.01.

**81-1372 Act; supplementary to Industrial Relations Act.**

The State Employees Collective Bargaining Act shall be deemed controlling for state employees and state employers covered by such act and is supplementary to the Industrial Relations Act except when otherwise specifically provided or when inconsistent with the Industrial Relations Act, in which case the State Employees Collective Bargaining Act shall prevail.

The State of Nebraska, its employees, employee organizations, and exclusive collective-bargaining agents shall have all the rights and responsibilities afforded employers, employees, employee organizations, and exclusive collective-bargaining agents pursuant to the Industrial Relations Act to the extent that such act is not inconsistent with the State Employees Collective Bargaining Act.

**Source:** Laws 1987, LB 661, § 4; Laws 2011, LB397, § 21.

## Cross References

**Industrial Relations Act**, see section 48-801.01.

The comparability requirement of the Industrial Relations Act is superseded by the 2-year contract requirement of the State Employees Collective Bargaining Act. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

**81-1373 Bargaining units; created; other employee units.**

(1) For the purpose of implementing the state employees' right to organize for the purpose of collective bargaining, there are hereby created twelve bargaining units for all state agencies except the University of Nebraska, the Nebraska state colleges, and other constitutional offices. The units shall consist of state employees whose job classifications are occupationally and functionally related and who share a community of interest. The bargaining units shall be:

(a) Maintenance, Trades, and Technical, which unit is composed of generally recognized blue collar and technical classes, including highway maintenance workers, carpenters, plumbers, electricians, print shop workers, auto mechanics, engineering aides and associates, and similar classes;

(b) Administrative Support, which unit is composed of clerical and administrative nonprofessional classes, including typists, secretaries, accounting clerks, computer operators, office service personnel, and similar classes;

(c) Health and Human Care Nonprofessional, which unit is composed of institutional care classes, including nursing aides, psychiatric aides, therapy aides, and similar classes;

(d) Social Services and Counseling, which unit is composed of generally professional-level workers providing services and benefits to eligible persons. Classes shall include job service personnel, income maintenance personnel, social workers, counselors, and similar classes;

(e) Administrative Professional, which unit is composed of professional employees with general business responsibilities, including accountants, buyers, personnel specialists, data processing personnel, and similar classes;

(f) Protective Service, which unit is composed of institutional security personnel, including correctional officers, building security guards, and similar classes;

(g) Law Enforcement, which unit is composed of employees holding powers of arrest, including Nebraska State Patrol officers and sergeants, conservation

officers, fire marshal personnel, and similar classes. Sergeants, investigators, and patrol officers employed by the Nebraska State Patrol as authorized in section 81-2004 shall be presumed to have a community of interest with each other and shall be included in this bargaining unit notwithstanding any other provision of law which may allow for the contrary;

(h) Health and Human Care Professional, which unit is composed of community health, nutrition, and health service professional employees, including nurses, doctors, psychologists, pharmacists, dietitians, licensed therapists, and similar classes;

(i) Examining, Inspection, and Licensing, which unit is composed of employees empowered to review certain public and business activities, including driver-licensing personnel, revenue agents, bank and insurance examiners who remain in the State Personnel System under sections 8-105 and 44-119, various public health and protection inspectors, and similar classes;

(j) Engineering, Science, and Resources, which unit is composed of specialized professional scientific occupations, including civil and other engineers, architects, chemists, geologists and surveyors, and similar classes;

(k) Teachers, which unit is composed of employees required to be licensed or certified as a teacher; and

(l) Supervisory, which unit is composed of employees who are supervisors as defined in section 48-801.

All employees who are excluded from bargaining units pursuant to the Industrial Relations Act, all employees of the personnel division of the Department of Administrative Services, and all employees of the Division of Employee Relations of the Department of Administrative Services shall be excluded from any bargaining unit of state employees.

(2) Any employee organization, including one which represents other state employees, may be certified or recognized as provided in the Industrial Relations Act as the exclusive collective-bargaining agent for a supervisory unit, except that such unit shall not have full collective-bargaining rights but shall be afforded only meet-and-confer rights.

(3) It is the intent of the Legislature that professional and managerial employee classifications and office and service employee classifications be grouped in broad occupational units for the University of Nebraska and the Nebraska state colleges established on a university-wide or college-system-wide basis, including all campuses within the system. Any unit entirely composed of supervisory employees of the University of Nebraska or the Nebraska state colleges shall be afforded only meet-and-confer rights. The bargaining units for academic, faculty, and teaching employees of the University of Nebraska and the Nebraska state colleges shall continue as they existed on April 9, 1987, plus the addition of Kearney State College, and any adjustments thereto or new units therefor shall continue to be determined pursuant to the Industrial Relations Act.

(4) Other constitutional offices shall continue to subscribe to the procedures for unit determination in the Industrial Relations Act, except that the commission is further directed to determine the bargaining units in such manner as to (a) reduce the effect of overfragmentation of bargaining units on the efficiency of administration and operations of the constitutional office and (b) be consistent with the administrative structure of the constitutional office. Any unit

entirely composed of supervisory employees of a constitutional office shall be afforded only meet-and-confer rights.

**Source:** Laws 1987, LB 661, § 5; Laws 1988, LB 684, § 2; Laws 1989, LB 247, § 13; Laws 1992, Third Spec. Sess., LB 14, § 26; Laws 2003, LB 85, § 4; Laws 2011, LB397, § 22.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

**81-1374 Repealed. Laws 2011, LB 397, § 36.**

**81-1375 Certified collective-bargaining agents; procedures applicable.**

Certified collective-bargaining agents representing bargaining units other than those prescribed in section 81-1373 shall not utilize the impasse procedures provided for in sections 81-1381 to 81-1385 nor file a petition with the commission invoking its jurisdiction as provided in the Industrial Relations Act.

**Source:** Laws 1987, LB 661, § 7; Laws 2011, LB397, § 23.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

**81-1376 Division of Employee Relations; created; Chief Negotiator; powers and duties.**

There is hereby created within the Department of Administrative Services the Division of Employee Relations to be headed by the Chief Negotiator who shall be appointed by, serve at the pleasure of, and represent the Governor. The Director of Administrative Services may serve as the Chief Negotiator. The division shall be responsible for negotiating and administering all labor contracts entered into by the State of Nebraska, except that the division shall not be responsible for contracts entered into by constitutional offices, the Board of Trustees of the Nebraska State Colleges, and the Board of Regents of the University of Nebraska.

The Chief Negotiator shall for agencies within the jurisdiction of the division:

(1) Negotiate or supervise the negotiations of labor contracts on a statewide basis;

(2) Be responsible for the administration of all collective-bargaining agreements, except that the Chief Negotiator may delegate such responsibility to designated representatives who may be employees of state agencies when the Chief Negotiator deems it appropriate;

(3) Be vested with authority on all mandatory topics of bargaining to negotiate the contracts. Contracts may adjust or change rates of pay and other terms and conditions of employment that are mandatory topics of bargaining pursuant to the Industrial Relations Act and the State Employees Collective Bargaining Act;

(4) Make recommendations to the Governor and Legislature regarding wages, hours, and conditions of employment for all unorganized employees. The recommendations submitted to the Legislature shall be submitted electronically;

(5) Consult with agency and department heads regarding possible terms of labor contracts and administration of agreements when appropriate; and

(6) Manage the day-to-day operations of the division.

The division and the Chief Negotiator may represent any of the constitutional offices in labor contract negotiations and administration of contracts if requested to do so by such offices by resolution of the governing officer or body submitted to the Chief Negotiator and affected collective-bargaining agent and filed with the commission.

The responsibilities for negotiating contracts with employees of the Nebraska state colleges and the University of Nebraska shall not be exercised by the division and the Chief Negotiator. The Board of Regents and the Board of Trustees of the Nebraska State Colleges shall be responsible for negotiating contracts with exclusive collective-bargaining agents for their employees.

**Source:** Laws 1987, LB 661, § 8; Laws 1992, Third Spec. Sess., LB 14, § 28; Laws 1997, LB 314, § 21; Laws 2012, LB782, § 199.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

**81-1377 Negotiation of labor contracts.**

(1) The Chief Negotiator or any other employer-representative and the exclusive collective-bargaining agent for employees under the Chief Negotiator's or employer-representative's jurisdiction shall bargain and negotiate labor contracts in good faith and reasonably in advance of the budget-making process.

(2) Retirement programs shall not be bargainable by or on behalf of any state employee.

(3) The obligation to negotiate in good faith shall not compel the Chief Negotiator or any other employer-representative or the exclusive collective-bargaining agent to agree to a proposal or make a concession.

(4) All contracts involving state employees and negotiated pursuant to the Industrial Relations Act or the State Employees Collective Bargaining Act shall cover a two-year period coinciding with the biennial state budget, except that the first contract entered into by a bargaining unit may cover only the second fiscal year of the biennium.

**Source:** Laws 1987, LB 661, § 9.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

The specific number of unused sick leave hours included in a retirement calculation does not constitute a retirement program under subsection (2) of this section. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

**81-1378 Computation of dates; effect.**

(1) The dates indicated in sections 81-1379 to 81-1384 shall refer to those dates immediately preceding the beginning of the contract period for which negotiations are being conducted.

(2) When any date provided in sections 81-1379 to 81-1384 falls on a Saturday, a Sunday, or any day declared by statutory enactment or proclamations of the Governor to be a holiday, the next following day which is not a Saturday, a Sunday, or a day declared by the enactment or proclamation to be a holiday shall be deemed to be the day indicated by such date.

(3) The dates indicated in sections 81-1382 and 81-1383 are jurisdictional. Failure of either party to act in a timely manner shall result in a jurisdictional bar for either the commission or Supreme Court.

**Source:** Laws 1987, LB 661, § 10; Laws 2011, LB397, § 24.

**81-1379 Negotiations; when commenced and completed; negotiated agreements; requirements; supplementary bargaining.**

The Chief Negotiator and any other employer-representative and the exclusive collective-bargaining agent shall commence negotiations on or prior to the second Wednesday in September of the year preceding the beginning of the contract period, except that the first negotiations commenced by any bargaining unit may commence after such September date in order to accommodate any unresolved representation proceedings. All negotiations shall be completed on or before March 15 of the following year.

All negotiated agreements shall be in writing and signed by the parties. The authority to enter into the agreed-upon contract shall be vested in the following:

- (1) For the University of Nebraska, the Board of Regents;
- (2) For the Nebraska state colleges, the Board of Trustees of the Nebraska State Colleges;
- (3) For other constitutional offices, the head of such office;
- (4) For all other agencies, the Governor; and
- (5) For the bargaining unit, a majority of those voting on ratification after notice of the contract terms is given and a secret ballot vote has been taken.

Nothing in the State Employees Collective Bargaining Act shall be construed to prohibit supplementary bargaining on behalf of employees in part of a bargaining unit concerning matters uniquely affecting such employees or cooperation and coordination of bargaining between two or more bargaining units. Supplementary bargaining in regard to employees for whom the Governor is the employer-representative shall be the responsibility of the Chief Negotiator and may be assigned to his or her designated representative.

Any agreements entered into pursuant to this section may be adjusted after March 15 only to reflect any order issued by the commission or the Supreme Court.

**Source:** Laws 1987, LB 661, § 11; Laws 1991, LB 732, § 149; Laws 2011, LB397, § 25.

**81-1380 Repealed. Laws 2011, LB 397, § 36.****81-1381 Submission to mediator; selection of mediator.**

If the parties in labor contract negotiations do not reach a voluntary agreement by January 1, the dispute shall be submitted to a mediator mutually selected by the parties or appointed by the Federal Mediation and Conciliation Service. Mediation may continue indefinitely at the request of either party or when appropriate in the judgment of the mediator. If necessary, mediation may continue after the exchange of final offers.

**Source:** Laws 1987, LB 661, § 13; Laws 2011, LB397, § 26.

**81-1382 Unresolved issues; final offers; prehearing conference; commission; authority.**

(1) No later than January 10, the parties in labor contract negotiations shall reduce to writing and sign all agreed-upon issues and exchange final offers on

each unresolved issue. Final offers may not be amended or modified without the concurrence of the other party.

(2) No later than January 15, the parties in labor contract negotiations shall submit all unresolved issues that resulted in impasse to the commission. No party shall submit an issue to the commission that was not subject to negotiations. The commission shall conduct a prehearing conference and shall have the authority to:

- (a) Determine whether the issues are ready for adjudication;
- (b) Accept stipulations;
- (c) Schedule hearings;
- (d) Prescribe rules of conduct for the hearings;
- (e) Order additional mediation if necessary; and
- (f) Take any other actions which may aid in the disposal of the action.

The commission may consult with the parties *ex parte* only with the concurrence of both parties.

**Source:** Laws 1987, LB 661, § 14; Laws 2011, LB397, § 27.

The January 10 deadline provided in this section is not jurisdictional. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

**81-1383 Commission order; commission; powers; duties; procedure; modification; appeal.**

(1) No later than March 1, the commission shall enter an order on each unresolved issue.

(2)(a) The commission's order shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained by peer employers for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions.

(b)(i) In establishing wage rates, the commission shall take into consideration the overall compensation received by the employees at the time of the negotiations, having regard to:

- (A) Wages for time actually worked;
- (B) Wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions; and
- (C) The continuity and stability of employment enjoyed by the employees.

(ii) The commission shall determine whether the total compensation of the members of the bargaining unit or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the total compensation falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the total compensation is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the total compensation is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the total compensation is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three

equal annual reductions. If the total compensation is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis.

(c) For purposes of determining peer employer comparability, the following factors shall be used by the commission:

(i) Geographic proximity of the employer;

(ii) Size of the employer, which shall not be more than twice or less than one-half, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(iii) The employer's budget for operations and personnel; and

(iv) Nothing in this subdivision (2)(c) of this section shall prevent parties from stipulating to an array member that does not otherwise meet the criteria in such subdivision, and nothing in such subdivision shall prevent parties from stipulating to less than seven or more than nine array members.

(d) To determine comparability for employees of the Board of Regents of the University of Nebraska or employees of the Board of Trustees of the Nebraska State Colleges, the commission shall utilize peer institutions with similar enrollments and similar educational missions which may exclude land grant institutions or institutions that have a medical center or hospital. Additionally, the commission shall refer to peer institutions with similar program offerings including the level of degrees offered.

(e) Any order or orders entered may be modified on the commission's own motion or on application by any of the parties affected, but only upon a showing of a new and material change in the conditions from those prevailing at the time the original order was entered.

(3) In cases filed under the State Employees Collective Bargaining Act, the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than those adopted pursuant to section 48-809. The commission shall receive evidence relating to array selection, job match, and wages and benefits which have been assembled by telephone, electronic transmission, or mail delivery and any such evidence shall be accompanied by an affidavit from the employer or any other person with personal knowledge which affidavit shall demonstrate the affiant's personal knowledge and competency to testify on the matters therein. The commission, with the consent of the parties to the dispute and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer as long as the individual in question has personal knowledge about the information being sought. The commission may rely upon information gained in such inquiry for its decision. Opinion testimony shall be

received by the commission based upon evidence provided in accordance with this subsection. Testimony concerning job match shall be received if job match inquiries were conducted by telephone, electronic transmission, or mail delivery if the witness providing such testimony verifies the method of such job match inquiry and analysis.

(4) The commission shall file its findings of fact and conclusions of law with its order.

(5) Either party may, within thirty days after the date such order is filed, appeal to the Supreme Court. The standard of review for any appeal to the Supreme Court shall be as provided in subsection (4) of section 48-825.

(6) The commission or the Supreme Court shall not enter an order for any period which is not the same as or included within the budget period for which the contract is being negotiated.

(7) All items agreed upon during the course of negotiations and not submitted as an unresolved issue to the commission shall, when ratified by the parties, take effect concurrent with the biennial budget period and shall constitute the parties' contract. Upon final resolution of appeals of all unresolved issues, the parties shall reduce the orders of the commission or the Supreme Court to writing and incorporate them into the contract without ratification.

**Source:** Laws 1987, LB 661, § 15; Laws 1991, LB 732, § 150; Laws 2011, LB397, § 28.

Parties are not permitted to offer additional evidence before the Commission of Industrial Relations. The commission's review of a special master's ruling is an appeal and does not

provide for the admission of additional evidence. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

#### **81-1384 Chief or appointed negotiator; report.**

On March 16, the Chief Negotiator, any appointed negotiator for the Board of Regents, any appointed negotiator for the Board of Trustees of the Nebraska State Colleges, and any appointed negotiator for other constitutional offices shall report to the Legislature and the Governor on the status of negotiations. The report submitted to the Legislature shall be submitted electronically. The Governor may amend his or her budget recommendations accordingly.

**Source:** Laws 1987, LB 661, § 16; Laws 2011, LB397, § 29; Laws 2012, LB782, § 200.

#### **81-1385 Commission proceeding; effect on employment; order; interest.**

When an unresolved issue proceeds to the commission, there shall be no change in the term or condition of employment in effect in that issue or issues until the commission has ruled and any subsequent appeal to the Supreme Court has been concluded. Orders adjusting the term or condition of employment in an issue or issues shall be effective beginning with final resolution of the appeal. Upon final resolution, the commission or Supreme Court shall order increases or other changes in a term or condition of employment to be concurrent with the biennial budget. Interest shall be paid, at the rate established by section 45-103 which is in effect at the time of the final order, by the state on all withheld wages or insurance premium payments.

**Source:** Laws 1987, LB 661, § 17; Laws 1991, LB 732, § 151; Laws 2011, LB397, § 30.

#### **81-1386 Prohibited practices; enumerated; expressions permitted.**

(1) It shall be a prohibited practice for any employer, employee, employee organization, or exclusive collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.

(2) It shall be a prohibited practice for any employer or the employer's negotiator to:

(a) Interfere with, restrain, or coerce state employees in the exercise of rights granted by the State Employees Collective Bargaining Act or the Industrial Relations Act;

(b) Dominate or interfere in the administration of any employee organization;

(c) Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against a state employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or the State Employees Collective Bargaining Act or because the employee has formed, joined, or chosen to be represented by any employee organization;

(e) Refuse to negotiate collectively with representatives of exclusive collective-bargaining agents as required in the Industrial Relations Act and the State Employees Collective Bargaining Act;

(f) Deny the rights accompanying certification or exclusive recognition granted in the Industrial Relations Act or the State Employees Collective Bargaining Act; and

(g) Refuse to participate in good faith in any impasse procedures for state employees as set forth in sections 81-1381 to 81-1385.

(3) It shall be a prohibited practice for any employees, employee organization, or bargaining unit or for any of their representatives or exclusive collective-bargaining agents to:

(a) Interfere with, restrain, coerce, or harass any state employee with respect to any of the employee's rights under the Industrial Relations Act or the State Employees Collective Bargaining Act;

(b) Interfere, restrain, or coerce an employer with respect to rights granted in the Industrial Relations Act or the State Employees Collective Bargaining Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

(c) Refuse to bargain collectively with an employer as required in the Industrial Relations Act or the State Employees Collective Bargaining Act; and

(d) Refuse to participate in good faith in any impasse procedures for state employees set forth in sections 81-1381 to 81-1385.

(4) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act or the State Employees Collective Bargaining Act if such expression contains no threat of reprisal or force or promise of benefit.

**Source:** Laws 1987, LB 661, § 18; Laws 2011, LB397, § 31.

**Cross References**

**Industrial Relations Act**, see section 48-801.01.

**81-1387 Prohibited practices; proceedings; appeal; grounds.**

(1) Proceedings against a party alleging a violation of section 81-1386 shall be commenced by filing a complaint with the commission within one hundred eighty days of the alleged violation thereby causing a copy of the complaint to be served upon the accused party. The accused party shall have ten days within which to file a written answer to the complaint. If the commission determines that the complaint has no basis in fact, the commission may dismiss the complaint. If the complaint has a basis in fact, the commission shall set a time for hearing. The parties shall be permitted to be represented by counsel, summon witnesses, and request the commission to subpoena witnesses on the requester's behalf.

(2) The commission shall file its findings of fact and conclusions of law. If the commission finds that the party accused has committed a prohibited practice, the commission, within thirty days of its decision, shall order an appropriate remedy. Any party may petition the district court for injunctive relief pursuant to rules of civil procedure.

(3) Any party aggrieved by any decision or order of the commission may, within thirty days from the date such decision or order is filed, appeal therefrom to the Supreme Court.

(4) Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and on no other:

- (a) If the commission acts without or in excess of its powers;
- (b) If the order was procured by fraud or is contrary to law;
- (c) If the facts found by the commission do not support the order; and
- (d) If the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

**Source:** Laws 1987, LB 661, § 19; Laws 1991, LB 732, § 152; Laws 1992, LB 360, § 38; Laws 2011, LB397, § 32.

The Commission of Industrial Relations, as an administrative body, has only that authority specifically conferred upon it by statute or by construction necessary to achieve the purpose of the relevant act. *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997).

Under the Industrial Relations Act, section 48-801 et seq., and the State Employees Collective Bargaining Act, section 81-1369

et seq., the Commission of Industrial Relations does not have the statutory authority to entertain or grant motions for summary judgment. *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997).

**81-1388 Commission; adopt rules and regulations.**

The commission shall adopt and promulgate rules and regulations necessary to carry out the State Employees Collective Bargaining Act.

**Source:** Laws 1987, LB 661, § 20.

**81-1389 Repealed. Laws 2011, LB 397, § 36.****81-1390 Repealed. Laws 2011, LB 397, § 36.**

## (d) STATE EMPLOYEES

**81-1391 Certified disaster service volunteer of American Red Cross; leave authorized.**

Any state employee who is a certified disaster service volunteer of the American Red Cross may, with the authorization of his or her supervisor, be

granted a leave not to exceed fifteen working days in each year to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross, without loss of pay, vacation time, sick leave, or earned overtime accumulation.

For purposes of this section, state employee means any employee of the state or of any state agency, specifically including all administrative, professional, academic, and other personnel of the University of Nebraska, the state colleges, and the State Department of Education, but excluding any employee or officer of the state whose salary is set by the Constitution of Nebraska or by statute. An employee of any local government or entity, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, shall not be considered a state employee for purposes of this section.

**Source:** Laws 1993, LB 697, § 7; Laws 1997, LB 314, § 23; Laws 1999, LB 87, § 97.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**81-1392 Repealed. Laws 2002, LB 406, § 3.**

**81-1393 Repealed. Laws 2005, LB 54, § 38.**

**81-1394 Participation in employee discount program; authorized.**

Notwithstanding any other provision of law, any state employee may participate in an employee discount program administered by the personnel division of the Department of Administrative Services. Any such program shall be made available to all state employees.

**Source:** Laws 2009, LB167, § 1.

## ARTICLE 14

### LAW ENFORCEMENT

#### Cross References

**Nebraska Commission on Law Enforcement and Criminal Justice**, continuing legal education for county attorneys and deputy county attorneys, duties, see section 23-1218 et seq.

**Nebraska State Patrol**, see Chapter 81, article 20.

**Pursuit of vehicles**, see sections 29-211 and 81-8,215.01.

#### (a) LAW ENFORCEMENT TRAINING

##### Section

- 81-1401. Terms, defined.
- 81-1402. Nebraska Law Enforcement Training Center; created; purposes.
- 81-1402.01. Individual training academies authorized.
- 81-1403. Council; duties; law enforcement agency; duties; administrative fine.
- 81-1404. Director of Nebraska Law Enforcement Training Center; duties.
- 81-1405. Employees; eligible for other state or political subdivision employment.
- 81-1406. Nebraska Police Standards Advisory Council; created; purpose and duties; meetings.
- 81-1407. Nebraska Police Standards Advisory Council; members; qualifications; terms; appointment; removal; hearing.
- 81-1408. Membership on council; other public office or employment.
- 81-1409. Council; members; compensation; expenses.
- 81-1410. Training academies; admission; criteria.
- 81-1411. Training center; admission; requirements; waive; when.
- 81-1412. Law enforcement officer; handgun proficiency; records.
- 81-1412.01. Handgun qualification test.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-1412.02. Handgun qualification register; requirements; fine.
- 81-1413. Training center; tuition, fees, and expenses; how paid.
- 81-1413.01. Nebraska Law Enforcement Training Center Cash Fund; created; purpose; investment.
- 81-1414. Law enforcement officers; certificate or diploma; when required; issuance; waiver.
- 81-1414.01. Repealed. Laws 2012, LB817, § 21.
- 81-1414.02. Repealed. Laws 2012, LB817, § 21.
- 81-1414.03. Nebraska Law Enforcement Training Center; cost of planning and construction; limitations.
- 81-1414.04. Nebraska Law Enforcement Training Center Fund; created; deposits; investment.
- 81-1414.05. Nebraska Law Enforcement Training Center Fund; proceeds; how expended.
- 81-1414.06. Nebraska Law Enforcement Training Center; appropriations.
- 81-1414.07. Continuing education requirements; course offerings.
- 81-1414.08. Continuing education requirements; certified reports; central registry.
- 81-1414.09. Continuing education requirements; failure to complete; effect; fine.
- 81-1414.10. Continuing education requirements; suspended while on active duty with armed forces.

### (b) COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

- 81-1415. Commission, defined.
- 81-1416. Nebraska Commission on Law Enforcement and Criminal Justice; created; purpose.
- 81-1417. Commission; members; qualifications; appointment; terms; special committee.
- 81-1418. Commission; members; terms; vacancy.
- 81-1419. Commission; chairperson; designated by Governor.
- 81-1420. Commission; membership; no disqualification to other public office or employment or forfeiture thereof.
- 81-1421. Commission; members; compensation; expenses.
- 81-1422. Commission; members; quorum.
- 81-1423. Commission; powers; duties.
- 81-1424. Commission; executive director; appointment; qualifications; compensation; removal; hearing.
- 81-1425. Executive director; powers; duties.
- 81-1426. Public officers and agencies; information, records, reports; furnish to commission; violation; penalty.
- 81-1427. Director of Juvenile Diversion Programs; appointment; duties.
- 81-1428. Law Enforcement Improvement Fund; created; use; investment.
- 81-1429. Law Enforcement Improvement Fund; how funded.
- 81-1429.01. Crimes Against Children Fund; created; use; investment.
- 81-1429.02. Repealed. Laws 1995, LB 15, § 6.

### (c) HUMAN TRAFFICKING

- 81-1430. Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.
- 81-1431. Training regarding issues in human trafficking; task force; duties.
- 81-1432. Repealed. Laws 1972, LB 1114, § 5.
- 81-1433. Repealed. Laws 1980, LB 684, § 22.
- 81-1434. Repealed. Laws 1980, LB 684, § 22.
- 81-1435. Repealed. Laws 1980, LB 684, § 22.
- 81-1436. Repealed. Laws 1980, LB 684, § 22.
- 81-1437. Repealed. Laws 1980, LB 684, § 22.

### (d) LAW ENFORCEMENT RESERVE FORCES

- 81-1438. Law enforcement reserve force; members; appointment.
- 81-1439. Law enforcement reserve force; commission; duties; delegation of responsibilities; continuing education requirements; reserve force manual contents.

## Section

- 81-1440. Law enforcement reserve officers; serve as peace officers; when.
- 81-1441. Law enforcement reserve officer; monetary assistance; hospital and medical benefits.
- 81-1442. Law enforcement reserve officer; not eligible for participation in certain pension funds or retirement systems.
- 81-1443. Law enforcement reserve officers; rights and duties when activated; weapon, when carried; subordinate to regular force officers.
- 81-1444. Law enforcement reserve officer; bond.
- 81-1445. Reserve officers; supplementary capacity; not to reduce or assume duties of peace officers.
- 81-1446. Reserve peace officers; procedure for appointment.

## (e) OFFICE OF VIOLENCE PREVENTION

- 81-1447. Office of Violence Prevention; established; director; advisory council; members; terms; vacancy.
- 81-1448. Membership on advisory council; no effect on other office or position.
- 81-1449. Advisory council members; expenses.
- 81-1450. Office of Violence Prevention; director; administration and supervision; responsibilities; advisory council; meetings; duties.
- 81-1451. Violence Prevention Cash Fund; created; administration; investment.

## (a) LAW ENFORCEMENT TRAINING

**81-1401 Terms, defined.**

For purposes of sections 81-1401 to 81-1414.10, unless the context otherwise requires:

(1) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Council means the Nebraska Police Standards Advisory Council;

(3) Director means the director of the Nebraska Law Enforcement Training Center;

(4) Felony means a crime punishable by imprisonment for a term of more than one year or a crime committed outside of Nebraska which would be punishable by imprisonment for a term of more than one year if committed in Nebraska;

(5) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(6) Incapacity means incapable of or lacking the ability to perform or carry out the usual duties of a law enforcement officer in accordance with the standards established by the commission due to physical, mental, or emotional factors. Incapacity does not exist if a law enforcement officer remains employed as a law enforcement officer, including employment as a law enforcement officer in a restricted or limited-duty status;

(7) Law enforcement agency means the police department or the town marshal in incorporated municipalities, the office of sheriff in unincorporated areas, and the Nebraska State Patrol;

(8)(a) Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the state or any political subdivision of the state for more than one hundred hours per year and is authorized by law to make arrests and includes, but is not limited to:

- (i) A full-time or part-time member of the Nebraska State Patrol;
  - (ii) A county sheriff;
  - (iii) A full-time, part-time, or reserve employee of a county sheriff's office;
  - (iv) A full-time, part-time, or reserve employee of a municipal or village police agency;
  - (v) A full-time or part-time Game and Parks Commission conservation officer;
  - (vi) A full-time or part-time deputy state sheriff; or
  - (vii) A full-time employee of an organized and paid fire department of any city of the metropolitan class who is an authorized arson investigator and whose duties consist of determining the cause, origin, and circumstances of fires or explosions while on duty in the course of an investigation;
- (b) Law enforcement officer does not include employees of the Department of Correctional Services, probation officers under the Nebraska Probation System, parole officers appointed by the Parole Administrator, or employees of the Department of Revenue under section 77-366; and
- (c) A law enforcement officer shall possess a valid law enforcement officer certificate or diploma, as established by the council, in order to be vested with the authority of this section, but this subdivision does not prohibit an individual from receiving a conditional appointment as an officer pursuant to subsection (2) of section 81-1414;
- (9) Training academy means the training center or such other council-approved law enforcement training facility operated and maintained by a law enforcement agency which offers certification training that meets or exceeds the certification training curriculum of the training center;
- (10) Training center means the Nebraska Law Enforcement Training Center; and
- (11) Training school means a public or private institution of higher education, including the University of Nebraska, the Nebraska state colleges, and the community colleges of this state, that offers training in a council-approved pre-certification course.

**Source:** Laws 1969, c. 773, § 1, p. 2925; Laws 1971, LB 929, § 1; Laws 1979, LB 565, § 1; Laws 1980, LB 834, § 63; Laws 1981, LB 205, § 3; Laws 1986, LB 529, § 53; Laws 1996, LB 1055, § 11; Laws 1999, LB 36, § 38; Laws 1999, LB 205, § 1; Laws 2000, LB 994, § 2; Laws 2007, LB334, § 105; Laws 2012, LB817, § 5; Laws 2013, LB538, § 1.

**81-1402 Nebraska Law Enforcement Training Center; created; purposes.**

There is hereby created the Nebraska Law Enforcement Training Center under the supervision and control of the council. The purposes of the training center shall be to (1) test all law enforcement candidates on behalf of the council to ensure that they meet pre-certification and certification requirements, (2) oversee and monitor other training schools and training academies to ensure that pre-certification and certification requirements as set by the council are being met, and (3) conduct pre-certification programs, certification

programs, and advanced law enforcement training programs as directed by the council.

**Source:** Laws 1969, c. 773, § 2, p. 2926; Laws 1971, LB 929, § 2; Laws 2000, LB 994, § 3.

**81-1402.01 Individual training academies authorized.**

The Nebraska Commission on Law Enforcement and Criminal Justice and the Nebraska State Patrol are authorized to maintain the independent and distinct operation of their individual training academies notwithstanding any provision of law, rule, or regulation.

**Source:** Laws 2000, LB 994, § 1.

**81-1403 Council; duties; law enforcement agency; duties; administrative fine.**

Subject to review and approval by the commission, the council shall:

(1) Adopt and promulgate rules and regulations for law enforcement pre-certification, certification, continuing education, and training requirements. Such rules and regulations may include the authority to impose a fine on any individual, political subdivision, or agency who or which violates sections 81-1401 to 81-1414.10 or any of such rules and regulations. The fine for each separate violation of sections 81-1401 to 81-1414.10 or of any rule or regulation adopted and promulgated by the council pursuant to such sections shall not exceed either (a) a one-time maximum fine of five hundred dollars or (b) a maximum fine of one hundred dollars per day until the individual, political subdivision, or agency complies with such rules or regulations. All fines collected pursuant to this subdivision shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;

(2) Adopt and promulgate rules and regulations for the operation of the training center;

(3) Recommend to the executive director of the commission the names of persons to be appointed to the position of director of the training center;

(4) Establish requirements for satisfactory completion of pre-certification programs, certification programs, and advanced training programs;

(5) Issue certificates or diplomas attesting satisfactory completion of pre-certification programs, certification programs, and advanced training programs;

(6) Revoke or suspend such certificates or diplomas according to rules and regulations adopted and promulgated by the council pursuant to sections 81-1401 to 81-1414.10 for reasons which shall include, but not be limited to, (a) incompetence, (b) neglect of duty, (c) physical, mental, or emotional incapacity, and (d) final conviction of or pleading guilty or nolo contendere to a felony. The rules and regulations shall provide for the revocation of a certificate or diploma without a hearing upon the certificate or diploma holder's final conviction of or pleading guilty or nolo contendere to a felony. When a law enforcement officer is separated from his or her agency due to physical, mental, or emotional incapacity, the law enforcement agency shall report the separation to the council, and the officer's law enforcement certificate shall be suspended pursuant to rules and regulations adopted and promulgated by the council until such time as the officer demonstrates to the council that the incapacity no longer

prevents the officer from performing the essential duties of a law enforcement officer. The council shall adopt and promulgate rules and regulations to include a procedure for hearing appeals of any person who feels that the revocation or suspension of his or her certificate or diploma was in error;

(7) Set the tuition and fees for the training center and all officers of other training academies not employed by that training academy's agency. The tuition and fees set for the training center pursuant to this subdivision shall be adjusted annually pursuant to the training center budget approved by the Legislature. All other tuition and fees shall be set in order to cover the costs of administering sections 81-1401 to 81-1414.10. All tuition and fees shall be remitted to the State Treasurer for credit to the Nebraska Law Enforcement Training Center Cash Fund;

(8) Annually certify any training academies providing a basic course of law enforcement training which complies with the qualifications and standards promulgated by the council and offering training that meets or exceeds training that is offered by the training center. The council shall set the maximum and minimum applicant enrollment figures for training academies training non-agency officers;

(9) Extend the programs of the training center throughout the state on a regional basis;

(10) Establish the qualifications, standards, and continuing education requirements and provide the training required by section 81-1439; and

(11) Do all things necessary to carry out the purpose of the training center, except that functional authority for budget and personnel matters shall remain with the commission.

Any administrative fine imposed under this section shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action by the office of the Attorney General in the name of the State of Nebraska in the district court of the county where the final agency action was taken. All fines imposed by the council shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1969, c. 773, § 3, p. 2926; Laws 1971, LB 929, § 3; Laws 1984, LB 673, § 1; Laws 1988, LB 666, § 1; Laws 1994, LB 971, § 3; Laws 2000, LB 994, § 4; Laws 2005, LB 115, § 1; Laws 2011, LB390, § 16; Laws 2012, LB817, § 6; Laws 2013, LB538, § 2.

A State Patrol trooper cannot continually engage in pattern of assaultive behavior toward his or her spouse and not be in violation of subsection (5) of this section. *Hauser v. Nebraska Police Stds. Adv. Council*, 269 Neb. 541, 694 N.W.2d 171 (2005).

A State Patrol trooper is not relieved of compliance with subsection (5) simply because he or she is "off duty." *Hauser v. Nebraska Police Stds. Adv. Council*, 269 Neb. 541, 694 N.W.2d 171 (2005).

Evidence of a State Patrol trooper's neglect of duty is enough to justify the revocation of his or her law enforcement certificate. *Hauser v. Nebraska Police Stds. Adv. Council*, 269 Neb. 541, 694 N.W.2d 171 (2005).

It is not necessary to prove both neglect of duty and emotional incapacity in order to revoke a law enforcement certificate.

*Hauser v. Nebraska Police Stds. Adv. Council*, 269 Neb. 541, 694 N.W.2d 171 (2005).

The Nebraska State Patrol's code of conduct, code of ethics, and oath of office may be used as guidelines for evaluating and making determinations as to the duties and conduct expected of a State Patrol trooper and in deciding whether a law enforcement certificate should be revoked pursuant to subsection (5) of this section. *Hauser v. Nebraska Police Stds. Adv. Council*, 269 Neb. 541, 694 N.W.2d 171 (2005).

It is the Nebraska Commission on Law Enforcement and Criminal Justice, not the Nebraska Police Standards Advisory Council, which is charged with the promulgation, adoption, and filing with the Secretary of State of rules and regulations. *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 605, 650 N.W.2d 760 (2002).

### **81-1404 Director of Nebraska Law Enforcement Training Center; duties.**

The director of the Nebraska Law Enforcement Training Center shall devote full time to the duties of the office and shall not engage in any other business or profession or hold any other state public office. The director shall be responsible to the executive director of the commission for the operation of the training center and the conducting of training programs. The director of the training center shall:

(1) Appoint and remove for cause such employees as may be necessary for the operation of the training center and delegate appropriate powers and duties to them;

(2) Conduct research for the purpose of evaluating and improving the effectiveness of law enforcement training programs;

(3) Consult with the council on all matters pertaining to training schools, training academies, and continuing education;

(4) Supervise the administration of the pre-certification competency test;

(5) Ensure that all council rules and regulations with respect to law enforcement pre-certification, certification, continuing education, and training requirements are implemented and complied with and, in that capacity, act as the director of standards for the council;

(6) Advise the council concerning the operation of the training center, the requirements, as set by the council, for all training schools and training academies, and the formulation of training policies and regulations;

(7) Issue diplomas to students who successfully complete the prescribed basic course of study; and

(8) Maintain continuing education records in a central registry.

**Source:** Laws 1969, c. 773, § 4, p. 2927; Laws 1971, LB 929, § 4; Laws 1994, LB 971, § 4; Laws 2000, LB 994, § 5; Laws 2011, LB390, § 17; Laws 2012, LB817, § 7.

**81-1405 Employees; eligible for other state or political subdivision employment.**

Notwithstanding any other provision of law to the contrary, employees of the training center other than the director shall be eligible to be employed by any other state agency or department or by any political subdivision of the state.

**Source:** Laws 1969, c. 773, § 5, p. 2927.

**81-1406 Nebraska Police Standards Advisory Council; created; purpose and duties; meetings.**

There is hereby created the Nebraska Police Standards Advisory Council. The council shall be a special standing committee of the commission with the express purpose of overseeing all training schools and training academies and the operation of the training center and ensuring that all rules, regulations, and policies with respect to pre-certification, certification, continuing education, and training requirements are implemented and complied with. The council shall act for the commission in all matters relating to law enforcement training, the training center, and continuing education but shall not have any other

powers and duties with respect to the commission or any of its duties. The council shall conduct regular meetings in order to carry out its statutory duties.

**Source:** Laws 1969, c. 773, § 6, p. 2927; Laws 1994, LB 971, § 5; Laws 2000, LB 994, § 6; Laws 2012, LB817, § 8.

It is the Nebraska Commission on Law Enforcement and Criminal Justice, not the Nebraska Police Standards Advisory Council, which is charged with the promulgation, adoption, and

filing with the Secretary of State of rules and regulations. *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 605, 650 N.W.2d 760 (2002).

**81-1407 Nebraska Police Standards Advisory Council; members; qualifications; terms; appointment; removal; hearing.**

(1) The Nebraska Police Standards Advisory Council shall consist of seven members appointed by the Governor. Six of the members shall be full-time officers or employees of a law enforcement agency and shall include one representative chief of police or his or her designee from a city of the metropolitan or primary class, a representative chief of police or his or her designee from a city of the first class, a representative chief of police or his or her designee from a city of the second class or village, a county sheriff or his or her designee from a county having a population of forty thousand or more, a county sheriff or his or her designee from a county having a population of forty thousand or less, and a member of the Nebraska State Patrol. The seventh member shall be a member of the Jail Standards Board or a person from the public at large. The representative chief of police or his or her designee from a city of the metropolitan or primary class shall not be a regular member of the commission.

(2) The members of the council shall serve for terms of four years each. Of the members first appointed, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, and two shall serve for terms of four years from January 1 next succeeding their appointment. Within ninety days after July 16, 1994, the Governor shall appoint the two additional members who shall serve for terms of four years from January 1 next succeeding their appointment. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled, for the remainder of the unexpired term, in the same manner as the original appointment. The council shall select one of its members as chairperson.

(3) No member of the council shall serve beyond the time when he or she holds the office or employment by reason of which he or she was initially eligible for appointment. A member may be removed from the council for cause upon notice and an opportunity to be heard at a public hearing before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges, his or her findings and disposition, together with a complete record of the proceedings.

**Source:** Laws 1969, c. 773, § 7, p. 2927; Laws 1994, LB 971, § 6.

**81-1408 Membership on council; other public office or employment.**

Notwithstanding any provision of law, ordinance, or charter provision to the contrary, membership on the council shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

**Source:** Laws 1969, c. 773, § 8, p. 2928.

**81-1409 Council; members; compensation; expenses.**

The members of the council shall serve without compensation, but they shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1969, c. 773, § 9, p. 2928; Laws 1981, LB 204, § 193.

**81-1410 Training academies; admission; criteria.**

(1) The council shall adopt and promulgate rules and regulations governing the minimum admission requirements for all training academies. Until the rules and regulations become effective, the admission requirements existing on July 13, 2000, pertaining to the training center shall be applicable to all training academies, except the Nebraska State Patrol. The rules and regulations shall establish admission criteria which shall include, but not be limited to, (a) physical, mental, and emotional fitness and (b) disclosure of any criminal history. The council may also adopt a priority system for admission to the training center and the other training academies conducting certification training for officers not employed by that training academy's agency.

(2) The council may admit an applicant to any training academy for entry-level law enforcement certification when the applicant meets the following minimum criteria:

(a) The applicant is or will be a citizen of the United States prior to the completion of certification;

(b) The applicant will reach the age of twenty-one years prior to the completion of the training;

(c) The applicant has been fingerprinted and a search has been made of local, state, and national fingerprint files for disclosure of any criminal record and the results furnished to the training center;

(d) The applicant has a valid motor vehicle operator's or chauffeur's license;

(e) The applicant has vision correctable to 20/30 and has no evidence of an irreversible disease which will affect the person's sight;

(f) The applicant has been pardoned or has never been convicted by any state or the United States of a crime punishable by imprisonment in a penitentiary for a term of one year or more or by any foreign government of a crime which would be punishable by imprisonment for a term of one year or more if committed in Nebraska or has had a conviction for such an offense overturned or reversed by a court of competent jurisdiction;

(g) The applicant possesses good character as determined by a thorough background investigation;

(h) The applicant (i)(A) is a high school graduate or (B) possesses a general educational development certificate and (ii) is able to read, write, and understand the English language at the eleventh grade level;

(i) The applicant has not been convicted of driving while intoxicated in the two years immediately preceding admission; and

(j) The applicant has been examined by a licensed physician one year or less prior to admission and has been certified by the physician to have met the physical requirements, as determined by the council, necessary to fulfill the

responsibilities of a law enforcement officer and successfully complete the requirements for training.

(3) In all cases in which it is necessary to acquire documents or other information to determine whether or not an applicant meets any of the requirements of subsection (2) of this section, such copies or other information shall be supplied by the applicant at his or her own expense.

**Source:** Laws 1969, c. 773, § 10, p. 2928; Laws 1988, LB 362, § 1; Laws 1994, LB 971, § 7; Laws 2000, LB 994, § 7.

**81-1411 Training center; admission; requirements; waive; when.**

Upon the request of any sheriff, chief of police, or any other person having an equivalent title who is appointed or employed by the state or a subdivision thereof to exercise supervisory authority over law enforcement officers, the council may waive requirements for admission to the training center.

**Source:** Laws 1969, c. 773, § 11, p. 2929; Laws 1971, LB 929, § 5; Laws 1994, LB 971, § 8.

**81-1412 Law enforcement officer; handgun proficiency; records.**

(1) In order to maintain proficiency in handgun operation, a law enforcement officer shall qualify at least once every calendar year with a handgun of the same make and model as the handgun which is the primary handgun to be carried by the law enforcement officer while on duty. Such qualification shall take place on a handgun shooting course submitted by the director and approved by the council.

(2) Qualification on a handgun shooting course shall be conducted by a qualified firearm instructor pursuant to rules and regulations adopted and promulgated by the council. Law enforcement agencies that do not have a qualified firearm instructor may share qualification with other law enforcement agencies that have a qualified firearm instructor or may utilize the Nebraska Association of Law Enforcement Firearm Instructors which may, at no cost, assist such law enforcement agencies by supplying a qualified firearm instructor for a handgun shooting course. The council shall adopt and promulgate rules and regulations for requalification for the case in which a law enforcement officer fails to qualify. The council shall adopt and promulgate rules and regulations that address the status of a law enforcement officer and his or her limitations, if any, if the law enforcement officer fails the handgun qualification. The council shall adopt and promulgate rules and regulations whereby the council may grant a waiver of the handgun qualification and determine the status and, if any, limitations of, a law enforcement officer in cases in which the law enforcement officer demonstrates an extreme hardship.

(3) Each law enforcement agency shall maintain its own records as to the handgun qualifications of its law enforcement officers.

**Source:** Laws 1996, LB 1055, § 13; Laws 1999, LB 205, § 2.

**81-1412.01 Handgun qualification test.**

The minimum handgun qualification test shall consist of a handgun shooting course requiring the firing of fifty rounds of ammunition for completion of the course and the handgun shooting course prescribed target shall be the Federal Bureau of Investigation's "Q" target. The target shall be fired upon at a

distance or at distances prescribed by the council. The method of scoring on the handgun shooting course shall be “pass/fail”. “Pass” means a score of seventy percent or higher. A law enforcement officer participating in the minimum handgun qualification test shall use a handgun of the same make and model as the handgun which he or she will be authorized to use while on duty. The council shall adopt and promulgate rules and regulations governing the handguns to be used in the handgun qualification when a law enforcement officer is not authorized to use a handgun on duty.

**Source:** Laws 1996, LB 1055, § 14; Laws 1999, LB 205, § 3.

#### **81-1412.02 Handgun qualification register; requirements; fine.**

The person in charge of any agency employing law enforcement officers shall submit to the council a register of full-time, part-time, and reserve law enforcement officers employed by his or her agency and whether each law enforcement officer passed or failed the handgun qualification. The council shall adopt and promulgate rules and regulations governing the submission of agency registers. The register shall include the name of each law enforcement officer, whether the law enforcement officer passed or failed the handgun qualification, the name of the instructor who administered the course, the date of handgun qualification, and the type of handgun used in handgun qualification. An agency that fails to submit a handgun qualification register pursuant to this section shall be subject to a fine of one hundred dollars for each day of noncompliance. All fines collected under this section shall be remitted to the State Treasurer for credit to the Law Enforcement Improvement Fund.

**Source:** Laws 1996, LB 1055, § 15; Laws 1999, LB 205, § 4; Laws 2012, LB817, § 9.

#### **81-1413 Training center; tuition, fees, and expenses; how paid.**

Tuition, fees, and such other expenses incurred in the pre-certification and certification training of applicants shall be the responsibility of the person or his or her employing agency. Such expenses also may be financed by the training center through other appropriated funds as determined by the council.

**Source:** Laws 1969, c. 773, § 13, p. 2930; Laws 1994, LB 971, § 9; Laws 2000, LB 994, § 8; Laws 2004, LB 1162, § 3; Laws 2006, LB 746, § 7; Laws 2010, LB844, § 1.

#### **81-1413.01 Nebraska Law Enforcement Training Center Cash Fund; created; purpose; investment.**

There is hereby created the Nebraska Law Enforcement Training Center Cash Fund. All receipts for tuition and fees paid to the Nebraska Law Enforcement Training Center shall be paid into the state treasury and by the State Treasurer credited to the Nebraska Law Enforcement Training Center Cash Fund. Such fund shall be used to defray the expenses of the training center, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Law Enforcement Training Center 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 1971, LB 223, § 1; Laws 2009, First Spec. Sess., LB3, § 75.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1414 Law enforcement officers; certificate or diploma; when required; issuance; waiver.**

(1) On and after January 1, 1972, law enforcement officers already serving under permanent appointment shall not be required to meet any requirement of subsection (2) of this section as a condition of tenure or continued employment.

(2) On and after January 1, 1972, no person shall receive appointment as a law enforcement officer unless he or she has been awarded a certificate or diploma by the commission attesting to satisfactory completion of the minimum curriculum of the training center as established by the council or has been awarded a certificate or diploma attesting to satisfactory completion of a training program which the council finds equivalent thereto. Any person who has not been awarded such a certificate or diploma may receive an appointment conditioned on satisfactory completion of such training if he or she immediately applies for admission to the training center or any training academy and enrolls in the next available basic training class. If such training is not completed within one year after the appointment, the person's employment shall not be renewed by a political subdivision appointment or otherwise and such person shall no longer be recognized as a law enforcement officer, except that in cases of extreme hardship, upon application by the officer, the council may grant a waiver to allow the officer to complete the basic training program as soon as is practicable after the one-year time allowance. Any individual who is not certified in accordance with this section and has worked as a law enforcement officer for multiple law enforcement agencies or political subdivisions shall have his or her time of employment aggregated in order to determine if he or she has worked for more than one year. If that law enforcement officer's aggregate time of employment exceeds one year, that officer shall not be recognized as a law enforcement officer for any political subdivision until he or she has satisfactorily completed such certification training. For purposes of this section, the council shall deem the successful completion of the federal Bureau of Indian Affairs basic police training program as administered by the Federal Law Enforcement Training Center to constitute such equivalent training, and officers certified by virtue of such equivalent training may exercise full law enforcement authority exclusively on tribal lands.

(3) Law enforcement officers who are promoted in rank shall satisfactorily complete such council-approved training within one year of such promotion.

(4) At the direction of the council, the director shall issue a certificate or diploma attesting to a compliance with the requirements of subsection (2) or (3) of this section to any applicant who presents evidence of satisfactory completion of a council-approved training program.

**Source:** Laws 1969, c. 773, § 14, p. 2930; Laws 1971, LB 929, § 7; Laws 1994, LB 971, § 10; Laws 1996, LB 1055, § 12; Laws 1997, LB 161, § 1; Laws 2000, LB 994, § 9; Laws 2012, LB817, § 10.

Under the facts of this case, a certificate for satisfactory completion of a training program relative to this section is not a condition precedent to a police officer's execution of official

duties as a law enforcement officer. *State v. Harney*, 237 Neb. 512, 466 N.W.2d 540 (1991).

**81-1414.01 Repealed. Laws 2012, LB817, § 21.**

**81-1414.02 Repealed. Laws 2012, LB817, § 21.****81-1414.03 Nebraska Law Enforcement Training Center; cost of planning and construction; limitations.**

The cost of planning and construction of the Nebraska Law Enforcement Training Center, excluding interest on indebtedness of such building and facilities, shall not exceed three million six hundred seventy-five thousand dollars plus the amount of investment income received by the Nebraska Law Enforcement Training Center Fund and by any of the bond or reserve funds established in connection with the city of Grand Island bond issue used to finance such building and facilities.

**Source:** Laws 1978, LB 877, § 3.

**81-1414.04 Nebraska Law Enforcement Training Center Fund; created; deposits; investment.**

There is hereby created, for the use of the commission, a fund to be known as the Nebraska Law Enforcement Training Center Fund, to consist of such money as appropriated to such fund by the Legislature. 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 877, § 4; Laws 1995, LB 7, § 126; Laws 2012, LB817, § 11.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1414.05 Nebraska Law Enforcement Training Center Fund; proceeds; how expended.**

The proceeds of the Nebraska Law Enforcement Training Center Fund shall be expended by the commission, as and when appropriated by the Legislature, to be used for the costs and payments to be made by the State of Nebraska to the city of Grand Island for the use by the state of such building or facility or portion thereof and equipping the same.

**Source:** Laws 1978, LB 877, § 5; Laws 2012, LB817, § 12.

**81-1414.06 Nebraska Law Enforcement Training Center; appropriations.**

It is the intent of the Legislature of Nebraska to appropriate to the Nebraska Law Enforcement Training Center Fund an amount sufficient for the costs and payments to be made by the State of Nebraska to the city of Grand Island for the lease by the state of the Nebraska Law Enforcement Training Center including an amount sufficient for operation and maintenance and lease payments sufficient to pay the principal and interest on the bonds issued by the city of Grand Island to finance such building and to maintain any required amounts in any bond and bond reserve funds.

**Source:** Laws 1978, LB 877, § 6; Laws 1979, LB 593, § 16; Laws 1986, LB 258, § 40.

**81-1414.07 Continuing education requirements; course offerings.**

(1) In order to maintain his or her professional status and serve the law enforcement profession, the community, and the residents of Nebraska, each law enforcement officer shall attend at least twenty hours of continuing education courses in the areas of criminal justice and law enforcement during each calendar year beginning on January 1 and ending on December 31. A law enforcement officer is not required to meet the continuing education requirements in the year in which he or she first becomes fully certified.

(2) Continuing education courses may be offered in the form of seminars, advanced education which may include college or university classes, conferences, instruction conducted within the law enforcement officer's law enforcement agency, or instruction conducted over the Internet, except that instruction conducted over the Internet shall be limited to ten hours annually, and shall be of a type which has application to and seeks to maintain and improve the skills of the law enforcement officer in carrying out his or her duties and responsibilities.

**Source:** Laws 2012, LB817, § 13.

**81-1414.08 Continuing education requirements; certified reports; central registry.**

Every law enforcement agency of the state or any of its political subdivisions shall send the director certified reports, on a form designed by the director, of the completion of the continuing education requirements by its law enforcement officers at such time and in such manner and detail as the director may prescribe. The director shall maintain a record of the reports in a central registry.

**Source:** Laws 2012, LB817, § 14.

**81-1414.09 Continuing education requirements; failure to complete; effect; fine.**

(1) Failure to complete the continuing education requirements of sections 81-1414.07 and 81-1414.08 shall result in the suspension of a law enforcement officer's certificate or diploma from the Nebraska Law Enforcement Training Center and a fine under section 81-1403 until the continuing education is completed unless the officer is able to show good cause for not completing the continuing education requirements or unless a waiver has been granted.

(2) Any law enforcement officer who fails to fulfill his or her continuing education requirements for two consecutive reporting periods may have his or her certificate or diploma from the Nebraska Law Enforcement Training Center revoked and a fine incurred under section 81-1403 unless the officer is able to show good cause for not completing the continuing education requirements or unless a waiver has been granted.

**Source:** Laws 2012, LB817, § 15.

**81-1414.10 Continuing education requirements; suspended while on active duty with armed forces.**

The continuing education requirements of sections 81-1414.07 to 81-1414.09 shall be suspended for any law enforcement officer while he or she is on active duty with the armed forces of the United States.

**Source:** Laws 2012, LB817, § 16.

## (b) COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

**81-1415 Commission, defined.**

As used in sections 81-1415 to 81-1426, unless the context otherwise requires: Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

**Source:** Laws 1969, c. 774, § 1, p. 2932.

**81-1416 Nebraska Commission on Law Enforcement and Criminal Justice; created; purpose.**

There is hereby created the Nebraska Commission on Law Enforcement and Criminal Justice. The commission shall educate the community at large to the problems encountered by law enforcement authorities, promote respect for law and encourage community involvement in the administration of criminal justice. The commission shall be an agency of the state, and the exercise by the commission of the powers conferred by the provisions of sections 81-1415 to 81-1426 shall be deemed to be an essential governmental function of the state.

**Source:** Laws 1969, c. 774, § 2, p. 2932.

**81-1417 Commission; members; qualifications; appointment; terms; special committee.**

(1) The Nebraska Commission on Law Enforcement and Criminal Justice shall consist of nineteen members. The membership shall include the Governor, the Attorney General, the Superintendent of Law Enforcement and Public Safety, the Director of Correctional Services, the chief of police or director of public safety of a city of more than two hundred thousand population, the chief of police or director of public safety of a city of two hundred thousand population or less, a county sheriff, a county attorney, a county commissioner, a mayor or city manager, a person involved with the control or prevention of juvenile delinquency, the chairperson of the Nebraska Police Standards Advisory Council, the chairperson of the Nebraska Coalition for Juvenile Justice, and six members, at least one of whom shall be a woman, from the public at large. The seven members of the council shall also be considered members of the commission acting as a special committee of the commission with limited powers and duties. A member of the commission may serve concurrently as a member of the council.

(2) The Governor may increase the membership of the commission at any time if such increase is necessary to comply with the provisions of any federal act providing funds for law enforcement or delinquency prevention purposes. Such members of the commission appointed by the Governor shall serve for terms of six years from January 1 next succeeding their appointments.

(3) Except for the Governor, the Attorney General, the Superintendent of Law Enforcement and Public Safety, the Director of Correctional Services, the chairperson of the Nebraska Police Standards Advisory Council, and the chairperson of the Nebraska Coalition for Juvenile Justice, the members of the commission shall be appointed by the Governor. The membership of the commission shall represent varying geographic areas and large and small governmental subdivisions.

**Source:** Laws 1969, c. 774, § 3, p. 2932; Laws 1994, LB 971, § 11; Laws 2002, LB 93, § 24; Laws 2013, LB561, § 63.

The portion of this section which mandates that the Governor appoint a district court judge as a member of the Nebraska Commission on Law Enforcement and Criminal Justice violates the distribution of powers clause and therefore is void and

unenforceable. The remainder of the section remains independently enforceable. State ex rel. Stenberg v. Murphy, 247 Neb. 358, 527 N.W.2d 185 (1995).

**81-1418 Commission; members; terms; vacancy.**

(1) The members of the commission appointed by the Governor, except for the members of the Nebraska Police Standards Advisory Council, shall serve for terms of six years each. Of the members first appointed, four shall serve for terms of two years, four shall serve for terms of four years, and five shall serve for terms of six years from January 1 next succeeding their appointments. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled, for the balance of the unexpired term, in the same manner as the original appointment.

(2) No member shall serve beyond the time when he or she holds the office, employment, or status by reason of which he or she was initially eligible for appointment. Any member of the commission appointed by the Governor may be removed from the commission for cause upon notice and an opportunity to be heard at a public hearing. One of the causes for removal shall be absence from three regularly scheduled meetings of the commission during any six-month period when the member has failed to advise the commission in advance of such meeting that he or she will be absent and stating a reason therefor.

**Source:** Laws 1969, c. 774, § 4, p. 2933; Laws 1994, LB 971, § 12.

**81-1419 Commission; chairperson; designated by Governor.**

The chairperson of the commission shall be designated by the Governor to serve at the pleasure of the Governor. The chairperson shall be the chief executive officer of the commission but may delegate such of his or her duties to the executive director as may be authorized by the commission.

**Source:** Laws 1969, c. 774, § 5, p. 2933; Laws 1994, LB 971, § 13.

**81-1420 Commission; membership; no disqualification to other public office or employment or forfeiture thereof.**

Notwithstanding any provision of law, ordinance, or charter provision to the contrary, membership on the commission shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

**Source:** Laws 1969, c. 774, § 6, p. 2933.

**81-1421 Commission; members; compensation; expenses.**

The members of the commission shall serve without compensation, but they shall be entitled to receive reimbursement for any actual expenses incurred as necessary incident to such service as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1969, c. 774, § 7, p. 2933; Laws 1981, LB 204, § 194.

**81-1422 Commission; members; quorum.**

Ten members of the commission shall constitute a quorum for the transaction of any business or the exercise of any power of the commission. The commis-

sion shall have the power to act by a majority of the members present at any meeting at which a quorum is in attendance.

**Source:** Laws 1969, c. 774, § 8, p. 2934; Laws 1994, LB 971, § 14.

**81-1423 Commission; powers; duties.**

The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written approval of the Director of Communications of the office of Chief Information Officer;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426, except that no activities or transfers or expenditures of funds available to the commission shall be inconsis-

tent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee and the Jail Standards Board; and

(16) Do all things necessary to carry out sections 81-1843 to 81-1851.

**Source:** Laws 1969, c. 774, § 9, p. 2934; Laws 1971, LB 225, § 1; Laws 1975, LB 427, § 20; Laws 1978, LB 713, § 27; Laws 1979, LB 412, § 11; Laws 1979, LB 322, § 57; Laws 1981, LB 477, § 7; Laws 1981, LB 545, § 36; Laws 1981, LB 328, § 1; Laws 1986, LB 540, § 1; Laws 1994, LB 971, § 15; Laws 2003, LB 46, § 16; Laws 2004, LB 270, § 4; Laws 2005, LB 538, § 21; Laws 2006, LB 921, § 10; Laws 2011, LB390, § 18.

#### Cross References

**Crime victim's reparations**, see Chapter 81, article 18.

**Jail Standards Board**, see sections 83-4,124 to 83-4,134.

### **81-1424 Commission; executive director; appointment; qualifications; compensation; removal; hearing.**

The Governor shall appoint and set the salary of the executive director consistent with any compensation and pay plan established by the personnel division of the Department of Administrative Services. The executive director shall be qualified for the position by appropriate training and experience in the field of criminal law and justice. The executive director may be removed only for cause by the Governor after a hearing, if requested.

**Source:** Laws 1969, c. 774, § 10, p. 2935; Laws 1992, Third Spec. Sess., LB 14, § 29.

### **81-1425 Executive director; powers; duties.**

The executive director of the commission shall:

(1) Supervise and be responsible for the administration of the policies established by the commission;

(2) Establish a Jail Standards subdivision and a Community Corrections Division within the commission and establish, consolidate, or abolish any administrative subdivision within the commission and appoint and remove for cause the heads thereof, and delegate appropriate powers and duties to them;

(3) Establish and administer projects and programs for the operation of the commission;

(4) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(5) Make rules and regulations for the management and the administration of policies of the commission and the conduct of employees under his or her jurisdiction;

(6) Collect, develop, maintain, and analyze statistical information, records, and reports as the commission may determine relevant to its functions, including, but not limited to, the statistical information set forth in section 47-627;

(7) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(8) Execute and carry out the provisions of all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons;

(9) Perform such additional duties as may be assigned to him or her by the commission, by the chairperson of the commission, or by law;

(10) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center;

(11) Appoint and remove for cause the director of the Office of Violence Prevention; and

(12) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 774, § 11, p. 2935; Laws 1981, LB 328, § 2; Laws 2000, LB 1008, § 3; Laws 2003, LB 46, § 17; Laws 2005, LB 538, § 22; Laws 2011, LB390, § 19.

**81-1426 Public officers and agencies; information, records, reports; furnish to commission; violation; penalty.**

(1) The commission shall adopt and promulgate rules and regulations for the standardized collection, development, and maintenance of statistical information, records, and reports, including, but not limited to, the Uniform Crime Report, and shall develop the prescribed form for the collection of data.

(2) The commission shall obtain from all public officers or agencies, the functions of which include the control, apprehension, trial, or correction of criminal offenders in this state, such information, records, and reports, including, but not limited to, the Uniform Crime Report, as the commission determines relevant to its functions.

(3) It shall be the duty of all public officers and agencies, the functions of which include the control, apprehension, trial, or correction of criminal offenders in the state, to provide such information, records, and reports, including, but not limited to, the Uniform Crime Report, as the commission determines relevant to its functions.

(4) Willful or repeated failure by any public officers and agencies, the functions of which include the control, apprehension, trial, or correction of criminal offenders in this state, to submit the prescribed information, records, or reports, including the Uniform Crime Report, prescribed in this section shall subject the agency or the administrator of the agency to a civil penalty of up to one hundred dollars per day for each day of violation. Such penalty shall be recoverable by way of a civil suit brought against such agency or individually against the administrator.

**Source:** Laws 1969, c. 774, § 12, p. 2936; Laws 1989, LB 722, § 1.

**81-1427 Director of Juvenile Diversion Programs; appointment; duties.**

(1) There is established within the Nebraska Commission on Law Enforcement and Criminal Justice the position of Director of Juvenile Diversion Programs to be appointed by the executive director of the commission.

(2) The Director of Juvenile Diversion Programs shall be supervised by the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice. The director shall be responsible for fostering, promoting,

researching, and assessing juvenile pretrial diversion programs and developing new programs in collaboration with cities and counties pursuant to sections 43-260.02 to 43-260.07. The director shall:

(a) Provide technical assistance and guidance to juvenile pretrial diversion programs for implementing evidence-based strategies or standardized, replicable practices that have been researched and have demonstrated positive outcomes;

(b) Develop a core juvenile pretrial diversion program packet for utilization by counties without a juvenile pretrial diversion program or counties without a district probation officer acting under section 29-2258;

(c) Establish baseline program guidelines for juvenile pretrial diversion programs based on evidence-based practices, principles, programs, and research, develop data collection and evaluation protocols, oversee statewide data collection, and generate an annual report on juvenile pretrial diversion programs;

(d) Develop relationships and collaborate with juvenile justice stakeholders involved in juvenile pretrial diversion programs, provide education and training as necessary, and serve on boards and committees when approved by the commission;

(e) Facilitate consistent communication and information-sharing among juvenile pretrial diversion program directors;

(f) Assist juvenile pretrial diversion program directors, county attorneys, district probation officers acting under section 29-2258, and county boards in developing policies and practices that achieve the goals of quality juvenile pretrial diversion programs;

(g) Assist in comprehensive community planning efforts as they relate to development of juvenile pretrial diversion programs;

(h) Develop and coordinate a statewide working group as a subcommittee of the Nebraska Coalition for Juvenile Justice to assist in regular strategic planning related to supporting, funding, monitoring, and evaluating the effectiveness of plans and programs receiving funds from the Community-based Juvenile Services Aid Program; and

(i) Assist the Director of the Community-based Juvenile Services Aid Program created under section 43-2404.01 in the review of Community-based Juvenile Services Aid Program applications as provided in section 43-2404.02.

**Source:** Laws 2013, LB561, § 53; Laws 2014, LB464, § 36.  
Operative date July 18, 2014.

**81-1428 Law Enforcement Improvement Fund; created; use; investment.**

The Law Enforcement Improvement Fund is created and shall be maintained by the State Treasurer as a cash fund. The fund shall consist of revenue credited pursuant to section 81-1429 and investment income. The fund shall be used for payment of administrative and operations expenses of the Nebraska Law Enforcement Training Center and such other expenses as budgeted by the Legislature for the improvement of law enforcement, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The Law Enforcement Improvement Fund shall be administered 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.

**Source:** Laws 1971, LB 929, § 9; Laws 1972, LB 1485, § 1; Laws 2000, LB 994, § 10; Laws 2006, LB 746, § 8; Laws 2009, First Spec. Sess., LB3, § 76.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1429 Law Enforcement Improvement Fund; how funded.**

A Law Enforcement Improvement Fund fee of two dollars shall be taxed as costs in each criminal proceeding, including traffic infractions and misdemeanors, filed in all courts of this state for violations of state law or city or village ordinances. No such fee shall be collected in any juvenile court proceeding or when waived under section 29-2709. Such fee shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each calendar quarter. The State Treasurer shall credit the money to the Law Enforcement Improvement Fund.

**Source:** Laws 1971, LB 929, § 10; Laws 1972, LB 1485, § 2; Laws 1981, LB 45, § 1; Laws 1982, LB 717, § 1; Laws 1989, LB 233, § 10; Laws 2000, LB 994, § 11; Laws 2006, LB 746, § 9; Laws 2009, LB35, § 31.

The independent act considered herein is not unconstitutional for failure to mention in the incidental provision for payment or exemption from payment of costs, nor for failure to refer to and

repeal certain other statutes. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

**81-1429.01 Crimes Against Children Fund; created; use; investment.**

There is hereby created the Crimes Against Children Fund. The fund shall be appropriated by the Legislature and administered by the Nebraska Commission on Law Enforcement and Criminal Justice for the purpose of reducing the expenses incurred by county attorneys in consulting with and retaining expert witnesses and other costs in the investigation and prosecution of crimes against children. 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 1246, § 8; Laws 1994, LB 1066, § 111.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1429.02 Repealed. Laws 1995, LB 15, § 6.**

(c) HUMAN TRAFFICKING

**81-1430 Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.**

(1) A task force is hereby established within the Nebraska Commission on Law Enforcement and Criminal Justice for the purposes of investigating and studying human trafficking, the methods for advertising human trafficking services, and the victimization of individuals coerced to participate in human trafficking.

(2) The task force shall examine the extent to which human trafficking is prevalent in this state, the scope of efforts being taken to prevent human trafficking from occurring, and the services available to victims of human trafficking in this state. The task force shall utilize information and research available from the Innocence Lost National Initiative. The task force shall research and recommend a model of rehabilitative services for victims of human trafficking that includes input from the areas of law enforcement, social services, the legal profession, the judiciary, mental health, and immigration. The task force shall also investigate the limitations upon victims who wish to come forward and seek medical attention; investigate the potential to stop human trafficking; and investigate the potential to promote recovery, to protect families and children who may be profoundly impacted by such abuse, and to save lives.

(3)(a) The Department of Labor shall work with the task force to develop or select informational posters for placement around the state. The posters shall be in English, Spanish, and any other language deemed appropriate by the task force. The posters shall include a toll-free telephone number a person may call for assistance, preferably the National Human Trafficking Resource Center Hotline (888)373-7888.

(b) Posters shall be placed in rest stops and strip clubs. The task force shall work with local businesses and nonprofit entities associated with the prevention of human trafficking to voluntarily place additional signs in high schools, postsecondary educational institutions, gas stations, hotels, hospitals, health care clinics, urgent care centers, airports, train stations, bus stations, and other locations around the state deemed appropriate by the task force.

(4) The task force shall consist of the following members:

(a) The Attorney General or his or her designee;

(b) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(c) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(d) The Director of Correctional Services or his or her designee;

(e) The chief of police or director of public safety of a city of two hundred thousand inhabitants or more;

(f) The chief of police or director of public safety of a city of less than two hundred thousand inhabitants;

(g) A county sheriff;

(h) A county attorney;

(i) A county commissioner;

(j) A mayor or city manager;

(k) A person involved with the control or prevention of juvenile delinquency;

(l) A person involved with the control or prevention of child abuse;

(m) The Commissioner of Education or his or her designee;

(n) The director of the Commission on Latino-Americans or his or her designee; and

(o) Six members, at least three of whom shall be women, from the public at large.

(5) The Governor shall appoint the members of the task force listed in subdivisions (4)(e) through (l) and (o) of this section for terms as provided in subsection (6) of this section. The membership of the task force shall represent varying geographic areas and large and small political subdivisions. One member from the public at large shall be a professional representing child welfare, and one member of the public at large shall represent juvenile pretrial diversion programs.

(6) The members of the task force appointed by the Governor shall serve six-year terms, except that of the members first appointed, four shall serve initial two-year terms, four shall serve initial four-year terms, and six shall serve initial six-year terms from January 1 next succeeding their appointments. Thereafter, all members shall serve six-year terms. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(7) No member shall serve beyond the time when he or she holds the office, employment, or status by reason of which he or she was initially eligible for appointment. Any member of the task force appointed by the Governor may be removed from the task force for cause upon notice and an opportunity to be heard at a public hearing. One of the causes for removal shall be absence from three regularly scheduled meetings of the task force during any six-month period when the member has failed to advise the task force in advance of such meeting that he or she will be absent and stating a reason therefor.

(8) The chairperson of the task force shall be designated by the Governor to serve at the pleasure of the Governor. The chairperson shall be the chief executive officer of the task force but may delegate such of his or her duties to other members of the task force as may be authorized by the task force.

(9) Notwithstanding any provision of law, ordinance, or charter provision to the contrary, membership on the task force shall not disqualify any member from holding any other public office or employment or cause the forfeiture thereof.

(10) The members of the task force shall serve on the task force without compensation, but they shall be entitled to receive reimbursement for any actual expenses incurred as necessary incident to such service as provided in sections 81-1174 to 81-1177.

(11) Eleven members of the task force shall constitute a quorum for the transaction of any business or the exercise of any power of the task force. The task force shall have the power to act by a majority of the members present at any meeting at which a quorum is in attendance.

(12) All appointments shall be made not later than thirty days after July 19, 2012. The chairperson shall meet with the task force not later than sixty days after July 19, 2012.

(13) Not later than one year after July 19, 2012, and every July 1 and December 1 thereafter, the task force shall report electronically to the Clerk of the Legislature the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the report with the clerk.

**Source:** Laws 2012, LB1145, § 2; Laws 2013, LB222, § 37; Laws 2013, LB255, § 12.

**81-1431 Training regarding issues in human trafficking; task force; duties.**

(1) It is the intent of the Legislature that law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff, and others involved in the juvenile justice system and the criminal justice system and other relevant officials be provided mandatory training regarding issues in human trafficking. The task force established in section 81-1430 shall work with such agencies, persons, and staff to develop a proper curriculum for the training and to determine how the training should be provided. The determination and accompanying legislative recommendations shall be made by December 1, 2012. Such training shall focus on:

- (a) State and federal law regarding human trafficking;
- (b) Methods used in identifying victims of human trafficking who are United States citizens and foreign nationals, including preliminary interview techniques and appropriate questioning methods;
- (c) Methods for prosecuting human traffickers;
- (d) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
- (e) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of women and minor victims;
- (f) The necessity of treating victims of human trafficking as crime victims rather than as criminals; and
- (g) Methods for promoting the safety and well-being of all victims of human trafficking.

(2) The task force shall also seek the input and participation of appropriate nongovernmental organizations and other relevant organizations regarding the provision, preparation, and presentation of the training called for in this section.

**Source:** Laws 2012, LB1145, § 3.

**81-1432 Repealed. Laws 1972, LB 1114, § 5.**

**81-1433 Repealed. Laws 1980, LB 684, § 22.**

**81-1434 Repealed. Laws 1980, LB 684, § 22.**

**81-1435 Repealed. Laws 1980, LB 684, § 22.**

**81-1436 Repealed. Laws 1980, LB 684, § 22.**

**81-1437 Repealed. Laws 1980, LB 684, § 22.**

**(d) LAW ENFORCEMENT RESERVE FORCES****81-1438 Law enforcement reserve force; members; appointment.**

The governing body of any county or city of this state, other than (1) a county containing a city of the metropolitan or primary class or (2) a city of the metropolitan or primary class, may establish a law enforcement reserve force. Members of such force shall be appointed at the discretion of the governing body. The governing body may limit the size of such reserve force.

**Source:** Laws 1976, LB 782, § 1; Laws 2004, LB 1162, § 4.

**81-1439 Law enforcement reserve force; commission; duties; delegation of responsibilities; continuing education requirements; reserve force manual; contents.**

(1) The Nebraska Commission on Law Enforcement and Criminal Justice shall establish minimum physical, mental, educational, and moral qualifications for all members of any law enforcement reserve force. The commission shall also establish training and continuing education standards and be responsible for providing such training for all members. The commission shall delegate its responsibilities pursuant to this section to the Nebraska Police Standards Advisory Council.

(2) Individuals appointed to a law enforcement reserve force shall receive training through or under the supervision of the Nebraska Law Enforcement Training Center and shall achieve the minimum training standards within one year after the date of appointment. Such training may be provided by the training center through regional workshops, training sessions, or similar means of instruction anywhere in the state.

(3) Members of the law enforcement reserve force shall be subject to the same continuing education requirements as all other law enforcement officers pursuant to sections 81-1401 to 81-1414.10.

(4) The governing body establishing a law enforcement reserve force shall adopt and publish a reserve force manual setting forth the minimum qualifications, training standards, standard operating procedures, and continuing education requirements for such force and such higher qualifications, standards, and operating procedures as may actually be used.

**Source:** Laws 1976, LB 782, § 2; Laws 1994, LB 971, § 16; Laws 2012, LB817, § 17.

**81-1440 Law enforcement reserve officers; serve as peace officers; when.**

Law enforcement reserve officers shall serve as peace officers on the orders and at the discretion of the sheriff, the mayor, or the chief of police.

**Source:** Laws 1976, LB 782, § 3.

**81-1441 Law enforcement reserve officer; monetary assistance; hospital and medical benefits.**

(1) Each law enforcement reserve officer shall be paid at a minimum rate of one dollar per year. The governing body of a county or city may provide additional monetary assistance for the purchase and maintenance of uniforms and equipment used by such officers.

(2) Hospital and medical assistance shall be provided by the governing body to members of the law enforcement reserve force who sustain injury in the course of performing official duties. Such benefits shall be provided in the same manner as those benefits provided for a full-time deputy sheriff or police officer.

**Source:** Laws 1976, LB 782, § 4.

**81-1442 Law enforcement reserve officer; not eligible for participation in certain pension funds or retirement systems.**

Nothing in sections 81-1438 to 81-1446 shall be construed to authorize or permit a law enforcement reserve officer to become eligible for participation in any pension fund or retirement system created by the laws of this state to which regular deputy sheriffs or police officers may become members.

**Source:** Laws 1976, LB 782, § 5.

**81-1443 Law enforcement reserve officers; rights and duties when activated; weapon, when carried; subordinate to regular force officers.**

(1) Law enforcement reserve officers, upon being activated by the sheriff, the mayor, or the chief of police, and while on assigned duty, shall be vested with the same rights, privileges, obligations, and duties of any other peace officer of this state.

(2) No person appointed to the reserve force may carry a weapon or otherwise act as a peace officer until he has been approved by the governing body. After approval, he may carry a weapon only when authorized by the sheriff or chief of police and when discharging official duties as a duly constituted peace officer.

(3) Law enforcement reserve officers shall be subordinate to regular force officers, shall not serve as a peace officer unless under the direction of regular officers, and when serving with regular force officers shall wear no insignia of rank. Each department for which a reserve force is established shall appoint a regular force officer as the reserve force coordinating and supervising officer. Such regular officer shall report directly to the sheriff or the chief of police.

**Source:** Laws 1976, LB 782, § 6.

**81-1444 Law enforcement reserve officer; bond.**

No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of two thousand dollars, payable to the county or city, has been filed with the clerk of the county or city by the individual appointed or a blanket surety bond arranged and paid for by the governing body and bonding all such officers of the governing body has been filed. Such bonds shall be subject to the provisions of Chapter 11, article 1.

**Source:** Laws 1976, LB 782, § 7; Laws 1986, LB 771, § 1.

**81-1445 Reserve officers; supplementary capacity; not to reduce or assume duties of peace officers.**

(1) The governing body shall not reduce the authorized size of a law enforcement department because of the establishment or utilization of reserve officers.

(2) Reserve officers shall act only in a supplementary capacity to the regular force and shall in no case assume the full-time duties of peace officers without first complying with all requirements for such regular peace officers.

**Source:** Laws 1976, LB 782, § 8.

**81-1446 Reserve peace officers; procedure for appointment.**

Sections 81-1438 to 81-1446 shall constitute the only procedure for the appointment of reserve peace officers. Any power granted by other provisions of law to local governing bodies or public officials for the appointment of

special deputies, special officers, or special police is of no effect and is hereby repealed.

**Source:** Laws 1976, LB 782, § 9.

(e) OFFICE OF VIOLENCE PREVENTION

**81-1447 Office of Violence Prevention; established; director; advisory council; members; terms; vacancy.**

(1) There is established within the Nebraska Commission on Law Enforcement and Criminal Justice the Office of Violence Prevention. The office shall consist of a director, appointed by the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, and other necessary support staff. There also is established an advisory council to the Office of Violence Prevention. The members of the advisory council shall be appointed by the Governor and serve at his or her discretion. The advisory council shall consist of six members and, of those members, each congressional district, as such districts existed on May 28, 2009, shall have at least one member on the council. The Governor shall consider appointing members representing the following areas, if practicable: Two members representing local government; two members representing law enforcement; one member representing community advocacy; and one member representing education with some expertise in law enforcement and juvenile crime.

(2) Members of the advisory council shall serve for terms of four years. A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

**Source:** Laws 2009, LB63, § 37; Laws 2011, LB390, § 20.

**81-1448 Membership on advisory council; no effect on other office or position.**

Notwithstanding any other provision of law, membership on the advisory council to the Office of Violence Prevention shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

**Source:** Laws 2009, LB63, § 38.

**81-1449 Advisory council members; expenses.**

Members of the advisory council to the Office of Violence Prevention shall serve without compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2009, LB63, § 39.

**81-1450 Office of Violence Prevention; director; administration and supervision; responsibilities; advisory council; meetings; duties.**

(1) The Office of Violence Prevention and its director shall be administered and supervised, respectively, by the Nebraska Commission on Law Enforcement and Criminal Justice. Among its responsibilities, the Office of Violence Prevention and its director shall be responsible for developing, fostering, promoting, and assessing violence prevention programs. To accomplish this

mission, the duties of the director shall include, but not be limited to, program fundraising, program evaluation, coordination of programs, and assistance with the administration and distribution of funds to violence prevention programs.

(2) The advisory council to the Office of Violence Prevention shall meet at least quarterly. Among its responsibilities, the advisory council shall recommend to the commission rules and regulations regarding program fundraising, program evaluation, coordination of programs, and the criteria used to assess and award funds to violence prevention programs. Priority for funding shall be given to communities and organizations seeking to implement violence prevention programs which appear to have the greatest benefit to the state and which have, as goals, the reduction of street and gang violence and the reduction of homicides and injuries caused by firearms. The duties of the advisory council shall include, but not be limited to, receiving applications for violence prevention funds, evaluating such applications, and making recommendations to the commission regarding the merits of each application and the amount of any funds that should be awarded. If any funds are awarded to a violence prevention program, the advisory council shall continuously monitor how such funds are being used by the program, conduct periodic evaluations of such programs, assess the progress and success regarding the stated goals of each program awarded funds, and recommend to the commission any modification, continuation, or discontinuation of funding.

**Source:** Laws 2009, LB63, § 40.

**81-1451 Violence Prevention Cash Fund; created; administration; investment.**

The Violence Prevention Cash Fund is created. The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. The State Treasurer shall credit to the fund such money as is transferred to the fund by the Legislature, donated as gifts, bequests, or other contributions to such fund from public or private entities, and made available by any department or agency of the United States if so directed by such department or 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.

**Source:** Laws 2009, LB63, § 41.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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