

## LEGISLATIVE BILL 1091

Approved by the Governor April 13, 2004

Introduced by Speaker Bromm, 23; at the request of the Governor

AN ACT relating to funds; to amend sections 71-7607, 71-7608, 71-7611, 79-1001, 79-1028, 81-504, 81-509, 81-523, 81-528, 81-550, and 81-5,153, Reissue Revised Statutes of Nebraska, sections 28-1249, 48-162.01, and 48-162.02, Revised Statutes Supplement, 2002, and section 9-812, Revised Statutes Supplement, 2003; to change and eliminate funds; to provide for transfers; to provide for incentives for school district reorganization; to eliminate obsolete language; to change a tax distribution; to create funds; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 9-812, Revised Statutes Supplement, 2003, is amended to read:

9-812. (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of expenses of the operation of the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold. The State Treasurer shall transfer five million dollars from the State Lottery Operation Trust Fund to the General Fund within fifteen days after July 1, 2004. Until October 1, 2003, at least twenty-five percent and beginning October 1, 2003, and until January 1, 2008, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund, except that the dollar amount transferred shall not be less than the dollar amount transferred to the funds in fiscal year 2002-03. On and after January 1, 2008, at least twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund. Of the money available to be transferred to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund, the first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in sections 83-162.01 to 83-162.04. Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund. Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Scholarship Fund. Forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act. One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in sections 83-162.01 to 83-162.04.

(2) The Education Innovation Fund is hereby created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement. For each fiscal year except fiscal years ~~2003-04 and 2004-05~~ 2003-04, 2004-05, 2005-06, and 2006-07, the Education Innovation Fund shall be allocated in the following manner: Up to twenty percent to fund the mentor teacher program pursuant to

the Quality Education Accountability Act; up to forty percent to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act; and up to forty percent of the fund shall be allocated by the Governor. For fiscal years 2003-04 and 2004-05, the Education Innovation Fund shall be allocated to the General Fund after operating expenses for the Excellence in Education Council are deducted. For fiscal years 2005-06 and 2006-07, the Education Innovation Fund shall be allocated as follows: The first one million dollars each fiscal year shall be transferred to the School District Reorganization Fund, and the remaining amount shall be allocated to the General Fund after operating expenses for the Excellence in Education Council are deducted.

At the direction of the budget administrator of the Department of Administrative Services, the State Treasurer shall transfer available unobligated balances existing in the Education Innovation Fund to the General Fund on or before July 15, 2005, in such amounts as determined by the budget administrator, to include: Any unobligated money remaining as of June 30, 2004, and June 30, 2005, in the Education Innovation Fund, appropriated for the Excellence in Education Council; investment income credited to the fund; and unobligated grant fund money returned to the state for credit to the Education Innovation Fund.

Allocations by the Governor shall be through incentive grants to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education. Such incentive grants allocated by the Governor are intended to provide selected school districts, teachers or groups of teachers, nonprofit educational organizations, educational service units, or cooperatives funding for the allowable costs of implementing pilot projects and model programs.

From the funds allocated by the Governor, minigrants shall be available to school districts to support the development of strategic school improvement plans which shall include statements of purposes and goals for the districts. The plans shall also include the specific statements of improvement or strategic initiatives designed to improve quality learning for every student.

In addition to the minigrants granted for the development of strategic school improvement plans, school districts with annual budget expenditures of three hundred fifty thousand dollars or less are eligible for minigrants from the funds allocated by the Governor for the purposes allowed in subdivisions (2)(a) through (q) of this section. The amount of this type of minigrant shall not exceed five thousand dollars. The school district shall present a curriculum support plan with its application for the grant. The curriculum support plan must show how the district is working to achieve one or more of the allowed purposes and how the grant will be used to directly advance the plan to achieve one or more of these purposes. The plan must be signed by the school administrator and a school board representative. The application for the grant shall be brief. The Excellence in Education Council shall select the recipients of this type of minigrant and shall administer such minigrants.

From the funds allocated by the Governor, major competitive grants shall be available to support innovative programs which are directly related to the strategic school improvement plans. The development of a strategic school improvement plan by a school district shall be required before a grant is awarded. Annual reports shall be made by program recipients documenting the effectiveness of the program in improving the quality of education as designed in the strategic school improvement plans. Special consideration shall be given to plans which contain public or private matching funds and cooperative agreements, including agreements for in-kind services. Purposes for which such major competitive grants would be offered shall include:

(a) Professional staff development programs to provide funds for teacher and administrator training and continuing education to upgrade teaching and administrative skills;

(b) The development of strategic school improvement plans by school districts;

(c) Educational technology assistance to public schools for the purchase and operation of computers, telecommunications equipment and services, and other forms of technological innovation which may enhance classroom teaching, instructional management, and districtwide administration. Telecommunications equipment, services, and forms of technical innovation shall be approved only after review by the technical panel created in section 86-521;

(d) An educational accountability program to develop an educational indicators system to measure the performance and outcomes of public schools and to ensure efficiency in operations;

(e) Alternative programs for students, including underrepresented groups, at-risk students, and dropouts;

(f) Programs that demonstrate improvement of student performance against valid national and international achievement standards;

(g) Early childhood and parent education which emphasizes child development;

(h) Programs using decisionmaking models that increase involvement of parents, teachers, and students in school management;

(i) Increased involvement of the community in order to achieve increased confidence in and satisfaction with its schools;

(j) Development of magnet or model programs designed to facilitate desegregation;

(k) Programs that address family and social issues impairing the learning productivity of students;

(l) Programs enhancing critical and higher-order thinking capabilities;

(m) Programs which produce the quality of education necessary to guarantee a competitive work force;

(n) Programs designed to increase productivity of staff and students through innovative use of time;

(o) Training programs designed to benefit teachers at all levels of education by increasing their ability to work with educational technology in the classroom;

(p) Approved accelerated or differentiated curriculum programs under sections 79-1106 to 79-1108.03; and

(q) Programs for children from birth to age twenty-one years with disabilities receiving special education under the Special Education Act and children from birth to age twenty-one years needing support services as defined in section 79-1125.01, which programs demonstrate improved outcomes for children from birth to age twenty-one years through emphasis on prevention and collaborative planning.

The Governor shall establish the Excellence in Education Council. The Governor shall appoint eleven members to the council including representatives of educational organizations, postsecondary educational institutions, the business community, and the general public, members of school boards and parent education associations, school administrators, and at least four teachers who are engaged in classroom teaching. The State Department of Education shall provide staff support for the council to administer the Education Innovation Fund, including the Quality Education Accountability Act. The council shall have the following powers and duties:

(i) In consultation with the department, develop and publish criteria for the awarding of incentive grants allocated by the Governor for programs pursuant to this subsection, including minigrants;

(ii) Provide recommendations to the Governor regarding the selection of projects to be funded and the distribution and duration of project funding;

(iii) Establish standards, formats, procedures, and timelines for the successful implementation of approved programs funded by incentive grants allocated by the Governor from the Education Innovation Fund;

(iv) Assist school districts in determining the effectiveness of the innovations in programs and practices and measure the subsequent degree of improvement in the quality of education;

(v) Consider the reasonable distribution of funds across the state and all classes of school districts;

(vi) Carry out its duties pursuant to the Quality Education Accountability Act; and

(vii) Provide annual reports to the Governor concerning programs funded by the fund. Each report shall include the number of applicants and approved applicants, an overview of the various programs, objectives, and anticipated outcomes, and detailed reports of the cost of each program.

To assist the council in carrying out its duties, the State Board of Education shall, in consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of programs funded from the Education Innovation Fund, including the Quality Education Accountability Act.

(3) Recipients of incentive grants allocated by the Governor from the Education Innovation Fund shall be required to provide, upon request, such data relating to the funded programs and initiatives as the Governor deems necessary.

(4) Any money in the State Lottery Operation Trust Fund, the State

Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation 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) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Sec. 2. Section 28-1249, Revised Statutes Supplement, 2002, is amended to read:

28-1249. ~~(1)~~ It shall be unlawful to sell any permissible fireworks at retail within this state, outside the limits of any incorporated city or village.

~~(2) Except as provided in subsection (3) of this section,~~ permissible fireworks may be sold at retail only between June 24 and July 5 of each year.

~~(3)(a) For the celebration of the year 2000, permissible fireworks may be sold at retail also between December 28, 1999, and January 1, 2000.~~

~~(b) All sales tax collected from the sale of fireworks pursuant to this subsection shall be remitted to the State Treasurer for credit to the Fire Insurance Tax Fund.~~

Sec. 3. Section 48-162.01, Revised Statutes Supplement, 2002, is amended to read:

48-162.01. (1) One of the primary purposes of the Nebraska Workers' Compensation Act is restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in physical, medical, or vocational rehabilitation to be appointed by the presiding judge. Salaries, other benefits, and administrative expenses incurred by the compensation court for purposes of vocational rehabilitation ~~may shall~~ be paid from the ~~Workers' Compensation Trust Compensation Court Cash~~ Fund.

(2) Such specialists shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of rehabilitation facilities and individual service providers, counselors, and specialists which have been approved by the Nebraska Workers' Compensation Court. The compensation court may approve as qualified such facilities, institutions, physicians, and other individual service providers, counselors, and specialists as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury and is staffed with trained and qualified personnel and, with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he or she has had the experience and training specified by the compensation court. No individual service provider, counselor, or specialist shall be considered qualified unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act is entitled to prompt medical and physical rehabilitation services. When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she is entitled to such vocational rehabilitation services, including job placement and retraining, as may be reasonably necessary to restore him or her to suitable employment.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop and implement a vocational rehabilitation

plan. It is a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It is a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a vocational rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the vocational rehabilitation counselor to be unlikely to result in a job placement for the injured employee that is consistent with the priorities listed in this section. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer;
- (c) A new job with the same employer;
- (d) A job with a new employer; or
- (e) A period of formal retraining which is designed to lead to employment in another career field.

Vocational rehabilitation training costs shall be paid from the Workers' Compensation Trust Fund.

(4) If physical or medical rehabilitation services are not voluntarily offered and accepted, the Nebraska Workers' Compensation Court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a qualified facility, institution, physician, or other individual service provider for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or medical rehabilitation treatment or service be provided at the expense of the employer or his or her insurer.

(5) When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Workers' Compensation Trust Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.

(6) The Nebraska Workers' Compensation Court may cooperate on a reciprocal basis with federal and state agencies for vocational education or vocational, physical, or medical rehabilitation or with any public or private agency.

(7) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with the rehabilitation, training, or educational program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (3) or (4) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. The compensation court or judge thereof may also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice.

Sec. 4. Section 48-162.02, Revised Statutes Supplement, 2002, is amended to read:

48-162.02. (1) The Workers' Compensation Trust Fund is created. The fund shall be administered by the Nebraska Workers' Compensation Court.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01 and for paying to make legislative fund transfers to the Compensation Court Cash Fund for the purpose of paying salaries, other benefits, and administrative expenses of the compensation court relating to such fund the Workers' Compensation Trust Fund. The State Treasurer shall be the custodian of the fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The fund shall be raised and derived as follows: Every insurance company which is transacting business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(3) The computation of the amounts as provided in this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid.

(4) The Director of Insurance, after notice and hearing in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the certificate of authority of any company or pool which fails to remit the amount due.

(5) The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workers' Compensation Trust Fund promptly upon completion of the audit and examination and in no event later than May 1 of the year in which the amounts have been received, except that (a) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account until disposition of the controversy and (b) one percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and who is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workers' Compensation Trust Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) The presiding judge of the Nebraska Workers' Compensation Court shall be charged with the conservation of the assets of the Workers' Compensation Trust Fund. The Attorney General shall appoint a member of his or her staff to represent the fund when necessary or when requested by the presiding judge in proceedings brought by or against the fund pursuant to section 48-162.01. The Attorney General shall appoint a member of his or her staff to represent the fund in all proceedings brought by or against the fund pursuant to section 48-128. When a claim is made by or against the fund pursuant to section 48-128 the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service shall be had upon the Attorney General.

(9) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Workers' Compensation Trust Fund setting forth the balance of the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of

any payment made from the fund.

(10) When the fund equals or exceeds two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance companies. Thereafter whenever the amount of the fund is reduced below one million two hundred thousand dollars by reason of payments and transfers made pursuant to this section or otherwise or whenever the presiding judge of the Nebraska Workers' Compensation Court determines that payments and transfers likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below one million two hundred thousand dollars, the presiding judge of the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance companies and risk management pools, that such contributions are to be resumed as of the date set in such notice and such contributions shall continue as provided in this section after the effective date of such notice. Such contributions shall continue until the fund again equals two million three hundred thousand dollars. Payments from the fund shall be made by the compensation court in accordance with section 48-162.01 in the same manner as for claims against the state. Payments from the fund shall be made by the compensation court in accordance with section 48-128 once each month in the same manner as the salaries of the employees of the compensation court are paid.

(11) Any expenses necessarily incurred by the Workers' Compensation Trust Fund or by the Attorney General ~~on behalf of~~ in connection with a proceeding brought by or against the fund may be paid out of the fund. Such expenses may be taxed as costs and recovered by the fund in any case in which the fund prevails.

~~(12) Any money in the Vocational Rehabilitation Fund on July 17, 2000, shall be transferred to the Workers' Compensation Trust Fund.~~

Sec. 5. Section 71-7607, Reissue Revised Statutes of Nebraska, is amended to read:

71-7607. (1) The Nebraska Medicaid Intergovernmental Trust Fund is created. The fund shall include revenue received from governmental nursing facilities receiving payments for nursing facility services under the medical assistance program established pursuant to section 68-1018. The Department of Health and Human Services Finance and Support shall remit such revenue to the State Treasurer for credit to the fund. The department shall adopt and promulgate rules and regulations to establish procedures for participation by governmental nursing facilities and for the receipt of such revenue under this section. Money from the Nebraska Medicaid Intergovernmental Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611.

(2) The department may use revenue in the Nebraska Medicaid Intergovernmental Trust Fund to offset any unanticipated reductions in medicaid funds received under this section.

(3) For FY2003-04 and FY2004-05, transfers may be made from the fund to the Department of Health and Human Services Cash Fund, the Behavioral Health Services Fund, and the Attorney General Child Protection Cash Fund at the direction of the Legislature to fund child welfare and protection activities and emergency protective services. The Department of Administrative Services shall administratively create the Attorney General Child Protection Cash Fund to be administered by the office of the Attorney General for the purpose of receiving fund transfers to assist with the prosecution of crimes against children.

(4) The State Treasurer shall transfer two million two hundred twenty thousand dollars from the Nebraska Medicaid Intergovernmental Trust Fund to the Department of Health and Human Services Cash Fund on or before May 1, 2004. The State Treasurer shall transfer five million four hundred twenty thousand dollars from the Nebraska Medicaid Intergovernmental Trust Fund to the Department of Health and Human Services Cash Fund on or before July 15, 2004. The State Treasurer shall transfer eighty thousand dollars from the Nebraska Medicaid Intergovernmental Trust Fund to the Attorney General Child Protection Cash Fund on or before May 1, 2004. The State Treasurer shall transfer eighty thousand dollars from the Nebraska Medicaid Intergovernmental Trust Fund to the Attorney General Child Protection Cash Fund on or before July 15, 2004.

(5) Any money in the ~~fund~~ Nebraska Medicaid Intergovernmental 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.

Sec. 6. Section 71-7608, Reissue Revised Statutes of Nebraska, is amended to read:

71-7608. The Nebraska Tobacco Settlement Trust Fund is created.

The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation to which the State of Nebraska is a party. The Department of Health and Human Services Finance and Support shall remit such revenue to the State Treasurer for credit to the fund, except that of such revenue received on or after April 1, 2005, two million five hundred thousand dollars shall be credited annually to the Tobacco Prevention and Control Cash Fund. Subject to the terms and conditions of such litigation, money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611. Any money in the Nebraska Tobacco Settlement 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.

Sec. 7. Section 71-7611, Reissue Revised Statutes of Nebraska, is amended to read:

71-7611. (1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer fifty million dollars annually no later than July 15 from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund. The state investment officer upon consultation with the Nebraska Investment Council shall advise the State Treasurer on the amounts to be transferred from the Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska Tobacco Settlement Trust Fund under this section in order to sustain such transfers in perpetuity. The state investment officer shall report to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers.

(2) Any money in the Nebraska Health Care 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.

(3) The State Treasurer shall transfer two million dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Designated Cash Fund within fifteen days after July 1, 2004.

(4) The State Treasurer shall transfer two million dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Designated Cash Fund within fifteen days after July 1, 2005.

(5) The State Treasurer shall transfer two million dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Designated Cash Fund within fifteen days after July 1, 2006.

Sec. 8. Section 79-1001, Reissue Revised Statutes of Nebraska, is amended to read:

79-1001. Sections 79-1001 to 79-1033 and sections 9 and 10 of this act shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Sec. 9. (1) To encourage consolidation of Class II and III school districts with less than three hundred ninety students, incentives shall be paid to reorganized Class II, III, IV, or V districts resulting from consolidations which meet the requirements of this section. This section shall only apply to consolidations with an effective date after May 31, 2005, and before June 1, 2007.

(2) To qualify for incentive payments under this section, the consolidation must be approved for incentive payments by the State Committee for the Reorganization of School Districts. Consolidating school districts shall file an application with the state committee within thirty days following the issuance of the boundary change order pursuant to subsection (1) of section 79-479. The state committee shall approve or disapprove incentive payments within thirty days after receipt of the application.

(3) For incentive payments to be approved by the state committee, a reorganization study, including efficiency, demographic, curriculum, facility, financial, and community components, must be completed. If a study containing such elements is completed and the reorganization will most likely result in more efficiency in the delivery of educational services or greater educational opportunities, the state committee may approve incentive payments.

(4) Incentive payments shall be based on the number of students moving from Class II or III school districts with less than three hundred ninety students into a reorganized Class II, III, IV, or V school district with at least three hundred ninety students based on the average daily membership in each affected district in the school fiscal year immediately preceding the first school fiscal year the boundary change will be in effect and the average daily membership the consolidated district would have had following the boundary change if it had occurred in the school fiscal year immediately preceding the first school fiscal year the boundary change will be in effect. The per-student incentive amount for each district involved in the



reorganization having an average daily membership of less than three hundred ninety students shall equal four thousand dollars minus the product of the average daily membership in such district multiplied by the ratio of three thousand divided by three hundred ninety. The total incentives for each such district shall equal the district's per-student incentive amount multiplied by the district's average daily membership.

(5) For school fiscal years 2005-06 and 2006-07, one million dollars shall be transferred from the Education Innovation Fund to the School District Reorganization Fund pursuant to section 9-812.

(6) Except as otherwise provided in this subsection, base fiscal year incentive payments shall equal fifty percent of the amount calculated pursuant to subsection (4) of this section. Base fiscal year incentive payments shall be calculated as of August 2 immediately preceding the base fiscal year and shall be paid directly to the reorganized district from the School District Reorganization Fund pursuant to subsection (5) of this section. 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, for the base fiscal year. If the total amount of base fiscal year incentive payments for that school fiscal year exceeds the amount in the School District Reorganization Fund, the base fiscal year incentive payments shall be reduced proportionately so that the total amount of base fiscal year incentive payments equals the amount in the fund. The base fiscal year incentive payments shall not be included in local system formula resources as calculated under section 79-1018.01.

(7) The amount calculated pursuant to subsection (4) of this section minus the amount of base fiscal year incentive payments pursuant to subsection (6) of this section shall be included in the distribution of state aid for the first school fiscal year following the base fiscal year.

Sec. 10. 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 payments to reorganized school districts pursuant to section 9 of this act. Any money remaining in the fund on July 1, 2008, shall be transferred to the General Fund on such date. 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.

Sec. 11. Section 79-1028, Reissue Revised Statutes of Nebraska, is amended to read:

79-1028. (1) A Class II, III, IV, V, or VI school district may exceed the local system's applicable allowable growth rate for (a) expenditures in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity or joint public agency, (b) expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (c) expenditures to pay 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, (d) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment, or (e) expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, to the extent the lease payments were not budgeted expenditures for fiscal year 1997-98.

(2) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount if the district projects an increase in formula students in the district over the current school year greater than twenty-five students or greater than those listed in the schedule provided in this subsection, whichever is less. Districts shall project increases in formula students on forms prescribed by the department. The department shall approve, deny, or modify the projected increases.

Average daily membership of district	Projected increase of formula students by percentage
0 - 50	10
50.01 - 250	5
250.01 - 1,000	3
1,000.01 and over	1

The department shall compute the district's estimated allowable budget per pupil using the budgeted general fund expenditures found on the

budget statement for the current school year divided by the number of formula students in the current school year and multiplied by the district's applicable allowable growth rate. The resulting allowable budget per pupil shall be multiplied by the projected formula students to arrive at the estimated budget needs for the ensuing year. The department shall allow the district to increase its general fund budget of expenditures for the ensuing school year by the amount necessary to fund the estimated budget needs of the district as computed pursuant to this subsection. On or before July 1, the department shall make available to districts which have been allowed additional growth pursuant to this subsection the necessary document to recalculate the actual formula students of such district. Such document shall be filed with the department under subsection (1) of section 79-1024.

(3) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount if construction, expansion, or alteration of district buildings will cause an increase in building operation and maintenance costs of at least five percent. The department shall document the projected increase in building operation and maintenance costs and may allow a Class II, III, IV, V, or VI district to exceed the local system's applicable allowable growth rate by the amount necessary to fund such increased costs. The department shall compute the actual increased costs for the school year and shall notify the district on or before July 1 of the recovery of the additional growth pursuant to this subsection.

(4) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount if the district demonstrates to the satisfaction of the department that it will exceed its applicable allowable growth rate as a result of costs pursuant to the Retirement Incentive Plan authorized in section 79-855 or the Staff Development Assistance authorized in section 79-856. The department shall compute the amount by which the increased cost of such program or programs exceeds the district's applicable allowable growth rate and shall allow the district to increase its general fund expenditures by such amount for that fiscal year.

(5) A Class II, III, IV, or V district may exceed its applicable allowable growth rate by the specific dollar amount of incentive payments or base fiscal year incentive payments to be received in such school fiscal year pursuant to section 9 of this act.

Sec. 12. Section 81-504, Reissue Revised Statutes of Nebraska, is amended to read:

81-504. 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 ~~fund created under section 81-523~~ State Fire Marshal Cash Fund.

Sec. 13. Section 81-509, Reissue Revised Statutes of Nebraska, is amended to read:

81-509. (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.

Sec. 14. Section 81-523, Reissue Revised Statutes of Nebraska, is amended to read:

81-523. (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.

(6) ~~There is hereby created a separate cash fund to be known as the Fire Insurance Tax Fund. Expenditures shall be made from such fund to maintain the office of the State Fire Marshal for the purpose of fire investigation, detection and suppression of arson, and other fire prevention activities. The State Treasurer shall transfer the entire balance in the Fire Insurance Tax Fund, including any investment income credited to the fund, to the State Fire Marshal Cash Fund, as soon as possible after the effective date of this act.~~

Sec. 15. Section 81-528, Reissue Revised Statutes of Nebraska, is amended to read:

81-528. (1) ~~Except as provided in subsection (2) of this section, all money received from inspection contracts, penalties, fees, or forfeitures, excepting 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 State Fire Marshal Fund. Any money in the State Fire Marshal 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 fees assessed pursuant to section 81-505.01 for services performed by the State Fire Marshal and money collected pursuant to sections 81-5,152 and 81-5,153 shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund which is hereby created. Any money in the State Fire Marshal 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. 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. 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) 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.

Sec. 16. Section 81-550, Reissue Revised Statutes of Nebraska, is amended to read:

81-550. (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. The fund shall only 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.

~~Money received from such assessments and the United States Government for administration of the act shall be remitted to the State Treasurer and credited to the Nebraska Natural Gas Pipeline Safety Fund, which fund is hereby created. Such money shall not be expended for purposes other than for the administration of the act.~~

Sec. 17. Section 81-5,153, Reissue Revised Statutes of Nebraska, is amended to read:

81-5,153. ~~Money collected pursuant to section 81-5,152 shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund. Such funds shall be for the purpose of administering the training program established pursuant to sections 81-5,151 to 81-5,157.~~

Any unobligated money in the State Department of Education Cash Fund remitted for the purpose of administering the training program for fire department personnel and others involved in fire safety training for developing and maintaining fire department skills and safety operations on July 17, 1993, shall be transferred to the State Fire Marshal Cash Fund on or after such date. 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. 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.

Any money in the State Fire Marshal Cash Fund remitted for the purpose of administering the training program for fire department personnel and others involved in fire safety training for developing and maintaining fire department skills and safety operations shall be transferred to the Training Division Cash Fund as soon as possible after the effective date of this act.

Sec. 18. Original sections 71-7607, 71-7608, 71-7611, 79-1001, 79-1028, 81-504, 81-509, 81-523, 81-528, 81-550, and 81-5,153, Reissue Revised Statutes of Nebraska, sections 28-1249, 48-162.01, and 48-162.02, Revised Statutes Supplement, 2002, and section 9-812, Revised Statutes Supplement, 2003, are repealed.

Sec. 19. Since an emergency exists, this act takes effect when passed and approved according to law.