

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1108

Introduced by Nordquist, 7.

Read first time January 21, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to compressed natural gas; to amend sections
2 39-2215, 66-697, 66-6,107, 66-6,109, 66-1810, and
3 66-1825, Reissue Revised Statutes of Nebraska; to impose
4 an excise tax and provide for its use; to provide for a
5 grant program; to provide funding and create a fund; to
6 change provisions relating to jurisdictional utilities;
7 to harmonize provisions; to repeal the original sections;
8 and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-2215, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 39-2215 (1) There is hereby created in the state treasury
4 a special fund to be known as the Highway Trust Fund.

5 (2) All funds credited to the Highway Trust Fund pursuant
6 to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and
7 66-6,109.02 and section 5 of this act, and related penalties and
8 interest, shall be allocated as provided in such sections.

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

24 (4) Of the money in the fund specified in subsection
25 (3) of this section which is not required for the use specified

1 in such subsection, (a) an amount equal to three dollars times
2 the number of motorcycles registered during the previous month
3 shall be placed in the Motorcycle Safety Education Fund, (b) an
4 amount to be determined annually by the Legislature through the
5 appropriations process may be transferred to the Motor Fuel Tax
6 Enforcement and Collection Cash Fund for use as provided in section
7 66-738 on a monthly or other less frequent basis as determined by
8 the appropriation language, (c) an amount to be determined annually
9 by the Legislature through the appropriations process shall be
10 transferred to the License Plate Cash Fund as certified by the
11 Director of Motor Vehicles, and (d) the remaining money may be
12 used for the purchase for retirement of the bonds issued prior to
13 January 1, 1988, in the open market.

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

19 (6) Except as provided in subsection (7) of this
20 section, the balance of the Highway Trust Fund shall be allocated
21 fifty-three and one-third percent, less the amount provided for
22 in section 39-847.01, to the Department of Roads, twenty-three
23 and one-third percent, less the amount provided for in section
24 39-847.01, to the various counties for road purposes, and
25 twenty-three and one-third percent to the various municipalities

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

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

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

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

11 Sec. 2. Section 66-697, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 66-697 Sections 66-697 to 66-6,116 and section 5 of this
14 act shall be known and may be cited as the Compressed Fuel Tax Act.

15 Sec. 3. Section 66-6,107, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 66-6,107 In addition to the tax imposed pursuant to
18 sections 66-6,108, 66-6,109, and 66-6,109.02 and section 5 of this
19 act, an excise tax of seven and one-half cents per gallon or gallon
20 equivalent is levied and imposed on all compressed fuel sold for
21 use in registered motor vehicles. The changes made to this section
22 by Laws 2008, LB 846, apply for tax periods beginning on and after
23 July 1, 2009.

24 Sec. 4. Section 66-6,109, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 66-6,109 In addition to the tax imposed by sections
2 66-6,107, 66-6,108, and 66-6,109.02 and section 5 of this act, each
3 retailer shall pay an excise tax of two and eight-tenths cents per
4 gallon or gallon equivalent on all compressed fuel sold for use in
5 registered motor vehicles. The changes made to this section by Laws
6 2008, LB 846, apply for tax periods beginning on and after July 1,
7 2009.

8 Sec. 5. (1) For tax periods beginning on and after July
9 1, 2010, at the time of filing the return required by section
10 66-6,110, the retailer shall, in addition to the other taxes
11 provided for by law, pay an excise tax at the rate of ten cents per
12 gallon or gallon equivalent on all compressed natural gas sold for
13 use in registered motor vehicles.

14 (2) All sums of money received under this section shall
15 be credited to the Highway Trust Fund. Credits and refunds of such
16 tax allowed to producers, suppliers, distributors, wholesalers, or
17 importers shall be paid from the Highway Trust Fund. The balance of
18 the amount credited under this section, after credits and refunds,
19 shall be allocated as follows:

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

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

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

1 Sec. 6. For purposes of sections 6 to 10 of this act:

2 (1) Compressed natural gas innovation grant means a grant
3 paid to an eligible entity for a compressed natural gas innovation
4 project;

5 (2) Compressed natural gas innovation project means
6 infrastructure investment relating to storage, distribution, or
7 dispensing of compressed natural gas, acquisition of motor vehicles
8 that operate using compressed natural gas, and conversion of motor
9 vehicles to operate using compressed natural gas;

10 (3) Department means the Department of Revenue;

11 (4) Eligible entity means a Nebraska resident or
12 business; and

13 (5) Natural gas provider means a person who takes title
14 to natural gas and sells it for consumption by a retail end user.

15 Sec. 7. (1) The Compressed Natural Gas Innovation Fund
16 is created. There shall be a separate subaccount within the
17 fund for each natural gas provider remitting matching funds and
18 administering a grant program for compressed natural gas innovation
19 projects. The fund shall be administered by the department. The
20 department shall remit to the State Treasurer for credit to the
21 proper subaccount of the fund state sales taxes and matching funds
22 remitted by the natural gas provider as provided in subsection (2)
23 of this section.

24 (2) Commencing July 1, 2010, a natural gas provider
25 may designate state sales taxes that the provider collected from

1 customers for credit to the subaccount of the fund for that natural
2 gas provider. The natural gas provider shall also remit, with such
3 designation, an equal amount of matching funds from the natural gas
4 provider. The total amount designated in a calendar year shall not
5 exceed ten percent of the total state sales tax collected by that
6 provider in the prior calendar year.

7 (3) The department shall adopt a form to (a) designate
8 part of the state sales tax collected by a natural gas provider to
9 be credited to a subaccount for administering a grant program and
10 (b) remit the matching funds.

11 (4) Any money in the fund available for investment
12 shall be invested by the state investment officer pursuant to
13 the Nebraska Capital Expansion Act and the Nebraska State Funds
14 Investment Act.

15 Sec. 8. (1) A natural gas provider that has remitted
16 matching funds to the department as provided in section 7 of this
17 act may establish and administer a grant program for compressed
18 natural gas innovation projects.

19 (2) The grant program shall provide for a compressed
20 natural gas innovation grant from the Compressed Natural Gas
21 Innovation Fund to an eligible entity for a compressed natural gas
22 innovation project upon certification by the natural gas provider
23 that it has approved the eligible entity's compressed natural
24 gas innovation project. The natural gas provider shall verify
25 completion of the compressed natural gas innovation project by

1 the eligible entity. The natural gas provider shall require the
2 eligible entity to pay fifty percent of the cost of the compressed
3 natural gas innovation project.

4 (3) The natural gas provider shall certify to the
5 department the amount of money to be distributed from the
6 applicable subaccount of the fund for compressed natural gas
7 innovation grants approved under subsection (2) of this section. A
8 natural gas provider may certify a distribution no more than once
9 per month. The department shall distribute the requested money to
10 the natural gas provider.

11 (4) A natural gas provider may contract with any
12 qualified person to administer a grant program for compressed
13 natural gas innovation projects under sections 6 to 10 of this act
14 or to make eligibility determinations for compressed natural gas
15 innovation grants.

16 Sec. 9. Beginning April 1, 2011, and annually on or
17 before April 1 thereafter, each natural gas provider administering
18 a grant program for compressed natural gas innovation projects
19 shall submit to the department a report describing each compressed
20 natural gas innovation grant made by the natural gas provider
21 during the preceding calendar year and the compressed natural gas
22 innovation project for which each such grant was made.

23 Sec. 10. The department may adopt and promulgate rules
24 and regulations to carry out its duties under sections 6 to 10 of
25 this act.

1 Sec. 11. Section 66-1810, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 66-1810 (1) A jurisdictional utility may provide service
4 at negotiated rates, contracts, and terms and conditions of
5 service under contract to high-volume ratepayers. Service under
6 the contracts shall be provided on such terms and conditions
7 and for such rates or charges as the jurisdictional utility and
8 the high-volume ratepayer agree, without regard to any rates,
9 tolls, tariffs, or charges the jurisdictional utility may have
10 filed with the commission. Upon the request of the commission,
11 the jurisdictional utility shall file such contracts with the
12 commission. The contracts are not public records within the
13 meaning of sections 84-712 to 84-712.09 and their disclosure
14 to any other person or corporation for any purpose is expressly
15 prohibited, except that they may be used by the commission in any
16 investigation or proceeding. Except as provided in this subsection,
17 high-volume ratepayers shall not be subject to the jurisdiction of
18 the commission.

19 (2) A jurisdictional utility may change any rate or other
20 charge demanded or received from or terms and conditions applicable
21 to its agricultural ratepayers and interruptible ratepayers not
22 otherwise qualifying as high-volume ratepayers, upon notice to
23 the commission and to the public. The commission may not suspend
24 such rate or charge filed by a jurisdictional utility, except
25 that the commission, after hearing and order, may change any such

1 rate or other charge demanded or received from a jurisdictional
2 utility's agricultural ratepayers upon complaint effective as
3 of the date of the order, if such rate or other charge is
4 found in such complaint proceeding to be unduly preferential or
5 unjustly discriminatory. The provisions of this subsection apply
6 notwithstanding any provision in the State Natural Gas Regulation
7 Act to the contrary.

8 (3) A jurisdictional utility may change any rate or other
9 charge demanded or received from or terms and conditions applicable
10 to its motor vehicle rate, upon notice to the commission and to
11 the public. The commission may not suspend such rate or charge
12 filed by a jurisdictional utility. The Legislature finds that a
13 natural gas motor vehicle rate that is less than the cost of
14 service is in the public interest and just and reasonable and
15 is not subsidization. The provisions of this subsection apply
16 notwithstanding any provision in the State Natural Gas Regulation
17 Act to the contrary.

18 Sec. 12. Section 66-1825, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 66-1825 (1) Every rate made, demanded, or received by
21 any natural gas public utility shall be just and reasonable.
22 Rates shall not be unreasonably preferential or discriminatory
23 and shall be reasonably consistent in application to a class
24 of ratepayers. Rates negotiated with agricultural ratepayers and
25 high-volume ratepayers in conformity with the State Natural Gas

1 Regulation Act and motor vehicle rates shall not be considered
2 discriminatory.

3 (2) No jurisdictional utility shall, as to rates or
4 terms and conditions of service, make or grant any unreasonable
5 preference or advantage to any person or subject any person to any
6 unreasonable prejudice or disadvantage.

7 (3) The commission, in the exercise of its power and
8 duty to determine just and reasonable rates for natural gas public
9 utilities, shall give due consideration to the public need for
10 adequate, efficient, and reasonable natural gas service and to
11 the need of the jurisdictional utility for revenue sufficient to
12 enable it to meet the cost of furnishing the service, including
13 adequate provisions for depreciation of its utility property used
14 and useful in rendering service to the public, and to earn a fair
15 and reasonable return upon the investment in such property.

16 (4) Cost of service shall include operating expenses
17 and a fair and reasonable return on rate base, less appropriate
18 credits.

19 (5) In determining a fair and reasonable return on the
20 rate base of a jurisdictional utility, a rate-of-return percentage
21 shall be employed that is representative of the utility's weighted
22 average cost of capital including, but not limited to, long-term
23 debt, preferred stock, and common equity capital.

24 (6) The rate base of the jurisdictional utility shall
25 consist of the utility's property, used and useful in providing

1 utility service, including the applicable investment in utility
2 plant, less accumulated depreciation and amortization, allowance
3 for working capital, such other items as may be reasonably
4 included, and reasonable allocations of common property, less
5 such investment as may be reasonably attributed to other than
6 investor-supplied capital unless such deduction is otherwise
7 prohibited by law.

8 (7) Operating expenses shall consist of expenses
9 prudently incurred to provide natural gas service including (a) a
10 reasonable allocation of common expenses as authorized and limited
11 by section 66-1819 and (b) the quantity and type of purchased
12 services regulated by the Federal Energy Regulatory Commission.

13 (8) In determining the cost of service, the Public
14 Service Commission shall give effect to all costs and allocations
15 as reflected in the rate schedules approved by the Federal Energy
16 Regulatory Commission.

17 (9) The Public Service Commission may include in a
18 jurisdictional utility's rate base the full or partial value
19 of stranded investment which was prudently incurred when the
20 investment actually was, or reasonably was expected to be, used and
21 useful in providing service to ratepayers and was stranded due to
22 changes in regulation or other circumstances reasonably beyond the
23 utility's control and subject to any reasonable obligation of the
24 utility to mitigate the cost.

25 (10) Subsidization is prohibited. For purposes of this

1 subsection, subsidization means the establishment of rates to
2 be collected from a ratepayer or class of ratepayers of a
3 jurisdictional utility that (a) include costs that properly are
4 includable in rates charged to other ratepayers or classes of
5 ratepayers of the utility, or other persons, firms, companies, or
6 corporations doing business with the jurisdictional utility, (b)
7 exclude costs that properly are includable in rates charged to
8 such ratepayers or classes of ratepayers, or (c) include costs
9 that properly are chargeable or allocable to a nonregulated private
10 enterprise engaged in by such jurisdictional utility. Motor vehicle
11 rates are not subsidization.

12 Sec. 13. Original sections 39-2215, 66-697, 66-6,107,
13 66-6,109, 66-1810, and 66-1825, Reissue Revised Statutes of
14 Nebraska, are repealed.

15 Sec. 14. Since an emergency exists, this act takes effect
16 when passed and approved according to law.