

## LEGISLATIVE BILL 1517

Approved by the Governor March 29, 1972

Introduced by Glenn A. Goodrich, 20th District; Eugene T. Mahoney, 5th District

AN ACT to adopt the Nebraska Industrial Development Corporation Act; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Corporation shall mean any corporation organized pursuant to the provisions of this act;

(2) Municipality shall mean any city of the metropolitan class;

(3) Project shall mean any land and any building or other improvement thereon, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof: (a) Any industry for the manufacturing, processing, or assembling of any agricultural, manufactured, or mineral products, (b) any commercial enterprise in storing, warehousing, distributing, or selling any products of agriculture, mining, or industry, or (c) any enterprise for research in connection with any of the foregoing, or for the purpose of developing new products or new processes, or improving existing products or known processes, or for the purpose of aiding in the development of facilities for the exploration of outer space or promoting the national defense, but shall not include facilities designed for the sale or distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities; and

(4) Governing body shall mean the city council.

Sec. 2. It is the intent of the Legislature to authorize the incorporation in the cities of the metropolitan class in this state of public corporations to acquire, enlarge, improve, expand, own, lease, and dispose of properties to the end that such corporations may be able to promote industry, develop trade, and further the use of the agricultural products and natural resources of this state by inducing manufacturing,

industrial, commercial, and research enterprises (1) to establish new projects in this state, (2) to enlarge and expand existing projects located in this state, or (3) to relocate, in or around the same municipality in this state, projects to replace projects all or a major portion of which have been acquired for one or more public purposes by the United States of America, the State of Nebraska, or any branch, arm, agency, instrumentality, or political subdivision of either, whether by purchase, through the exercise of the power of eminent domain, or by other means. It is the further intent of the Legislature to vest such public corporations with all powers that may be necessary to enable them to accomplish such purposes. It is not intended that any such corporation shall itself be authorized to operate any such manufacturing, industrial, commercial, or research enterprise. This act shall be liberally construed in conformity with such intention.

Sec. 3. Whenever any number of natural persons, not less than three, each of whom shall be a duly qualified elector of and taxpayer in the municipality, shall file with the governing body of any city of the metropolitan class an application in writing seeking permission to apply for the incorporation of an industrial development board of such municipality, the governing body shall proceed to consider such application. If the governing body shall, by appropriate resolution duly adopted, (1) find and determine that it is wise, expedient, necessary, or advisable that the corporation be formed, (2) authorize the persons making such application to proceed to form such corporation, and (3) approve the form of the articles of incorporation proposed to be used in organizing the corporation, then the persons making such application shall execute, acknowledge, and file articles of incorporation for the corporation as provided in this act. No corporation may be formed unless such application shall have first been filed with the governing body of the municipality and the governing body shall have adopted a resolution as provided in this section.

Sec. 4. The articles of incorporation shall set forth: (1) The names and residences of the applicants together with a recital that each of them is an elector of and taxpayer in the municipality, (2) the name of the corporation, (3) a recital that permission to organize the corporation had been granted by resolution duly adopted by the governing body of the municipality and the date of the adoption of such resolution, (4) the location of the registered office of the corporation, which shall be in the municipality and the name of its registered agent at such office, (5) the purposes for which the

corporation is proposed to be organized, (6) the number of directors of the corporation, (7) the period, if any, for the duration of the corporation, and (8) any other matter which the applicants may choose to insert therein which shall not be inconsistent with this act or with the laws of this state. The articles of incorporation shall be subscribed and acknowledged by each of the applicants before an officer authorized by the laws of Nebraska to take acknowledgments to deeds.

Sec. 5. When executed and acknowledged in conformity with section 4 of this act, the articles of incorporation shall be filed with the Secretary of State. The Secretary of State shall thereupon examine the articles of incorporation and, if he finds that the recitals contained therein are correct, that the requirements of section 4 of this act have been complied with, and that the name is not identical with or so nearly similar to that of another corporation already in existence in this state as to lead to confusion and uncertainty, he shall approve the articles of incorporation and record them in his office. When such articles have been so made, filed, and approved, the applicants shall constitute a public corporation under the name set out in the articles of incorporation.

Sec. 6. The articles of incorporation may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the articles of incorporation in the first instance. To effect any such amendment, the members of the board of directors of the corporation shall file with the governing body of the municipality, an application in writing seeking permission to amend the articles of incorporation, specifying in such application the amendment proposed to be made. Such governing body shall consider such application and, if it shall by appropriate resolution (1) duly find and determine that it is wise, expedient, necessary, or advisable that the proposed amendment be made, (2) authorize the same to be made, and (3) approve the form of the proposed amendment, then the persons making such application shall execute an instrument embodying the amendment specified in such application, which shall be subscribed and acknowledged by each member of the board of directors before an officer authorized by the laws of Nebraska to take acknowledgments to deeds, and shall file the same with the Secretary of State. The Secretary of State shall thereupon examine the proposed amendment and, if he finds that the requirements of this section have been complied with and that the proposed amendment is within the scope of what might be included in the original articles of incorporation, he shall approve the amendment and record

it in an appropriate book in his office. When such amendment has been so made, filed, and approved, it shall thereupon become effective and the articles of incorporation shall thereupon be amended to the extent provided in the amendment. No articles of incorporation under this act shall be amended except in the manner provided in this section.

Sec. 7. The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, all of whom shall be duly qualified electors of and taxpayers in the municipality. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties under this act. The directors shall be elected by the governing body of the municipality. Any meeting held by the board of directors for any purpose whatsoever shall be open to the public.

Sec. 9. (1) The corporation shall have the following powers together with all powers incidental thereto or necessary for the performance thereof: (a) To have succession by its corporate name for the period specified in the articles of incorporation unless sooner dissolved as provided in section 15 of this act, (b) to sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties, (c) to have and to use a corporate seal and to alter the same at pleasure, (d) to acquire, whether by purchase, construction, exchange, gift, lease, or otherwise, and to improve, maintain, equip, and furnish one or more projects, including all real and personal properties which the board of directors may deem necessary in connection therewith and regardless of whether or not any such projects shall then be in existence, (e) to lease to others any or all of its projects and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof, (f) to sell, exchange, donate, and convey any or all of its properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the corporation was organized, (g) to issue its bonds for the purpose of carrying out any of its powers, (h) to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenue and receipts therefrom or from any thereof as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, and (i) to employ and pay compensation to such

employees and agents, including attorneys, as the board of directors shall deem necessary for the business of the corporation.

(2) Any project or projects of the corporation may be located within or without or partially within and partially without the municipality, subject to the following conditions: (a) No such project or part thereof shall be located more than twenty-five miles from the corporate limits of the municipality, (b) in no event shall any project or part thereof be located within the corporate limits of another city or of any village in this state, (c) no such project or part thereof shall be located within the police jurisdiction of another city or of any village in this state unless the governing body of such other city or village has first adopted a resolution consenting to the location of such project or part thereof in the police jurisdiction of such city or village, and (d) no such project or part thereof shall be located in a county other than that in which the municipality is situated unless the board of county commissioners of such other county has first adopted a resolution consenting to the location of such project or part thereof in such county. The corporation shall not have power to operate any project as a business other than as a lessor.

Sec. 10. All bonds issued by the corporation shall be payable solely out of the revenue and receipts derived from the leasing or sale by the corporation of its projects or of any thereof as may be designated in the proceedings of the board of directors under which the bonds shall be authorized to be issued. Such bonds may be executed and delivered by the corporation at any time and from time to time, may be in such form and denominations and of such tenor and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty years from the date thereof, may be payable at such place or places whether within or without the State of Nebraska, may bear interest at such rate or rates payable at such time or times and at such place or places and evidenced in such manner, may be executed by such officers of the corporation and in such manner, and may contain such provisions not inconsistent with this section, all as shall be provided in the proceedings of the board of directors by which the bonds shall be authorized to be issued. If deemed advisable by the board of directors, there may be included in the proceedings under which any bonds of the corporation are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices

and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing contained in this section shall be construed to confer on the corporation any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the corporation may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors to be most advantageous, and the corporation may pay all expenses, premiums, and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the corporation of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings under which any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds unless in the proceedings authorizing such prior issue the right was reserved to issue subsequent bonds on a parity with such prior issue. Any bonds of the corporation at any time outstanding may at any time and from time to time be refunded by the corporation by the issuance of its refunding bonds in such amount as the board of directors may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same projects or separate projects, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. All such bonds and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments.

Sec. 11. The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenue and receipts out of which the same shall be made payable, and may be secured by a mortgage or deed of trust covering all or any part of the projects from which the revenue or receipts so pledged may be

derived, including any enlargements of and additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the corporation to others, the creation and maintenance of special funds from such revenue and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions of this section. Each pledge, agreement, mortgage, and deed of trust made for the benefit of security of any of the bonds of the corporation shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the corporation made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage or deed of trust executed as security therefor, the rights of the bondholders may be enforced by mandamus, the appointment of a receiver in equity, or by foreclosure of any such mortgage or deed of trust, or any one or more of such remedies.

Sec. 12. The corporation and all properties at any time owned by it and only while owned by it and the income therefrom, and all bonds issued by it and the income therefrom, shall be exempt from all taxation in the State of Nebraska.

Sec. 13. The municipality shall not in any event be liable for the payment of the principal of or interest on any bonds of the corporation, or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the corporation, and none of the bonds of the corporation or any of its agreements or obligations shall be construed to constitute an indebtedness of the municipality within the meaning of any constitutional or statutory provision.

Sec. 14. The corporation shall be a nonprofit corporation and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that, in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, any net earnings of the corporation thereafter accruing shall be paid to the municipality with respect to which the corporation was organized.

Sec. 15. Whenever the board of directors shall by resolution determine that the purposes for which the corporation was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the corporation have been fully paid, the board of directors shall thereupon execute and file for record in the office of the Secretary of State a certificate of dissolution reciting such facts and declaring the corporation to be dissolved. Such certificate of dissolution shall be executed under the corporate seal of the corporation. Upon the filing of such certificate of dissolution, the corporation shall stand dissolved and the title to all funds and properties owned by it at the time of such dissolution shall vest in the municipality, and possession of such funds and properties shall forthwith be delivered to such municipality.

Sec. 16. The articles of incorporation, any deeds or other documents whereby properties are conveyed to the corporation, any mortgages or deeds of trust executed by the corporation, any leases made by the corporation, and the certificate of dissolution of the corporation, may all be filed for record without the payment of any tax or fees other than such fees as may be authorized by law for the recording of such instruments.

Sec. 17. This act shall not be construed as a restriction or limitation upon any powers which the corporation might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as is provided in this act, any other law to the contrary notwithstanding, but nothing in this act shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation, or to impair any power thereof of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Sec. 18. In all cases when there has heretofore been an attempt to incorporate a municipal industrial development corporation under the provisions of the Nebraska nonprofit corporation act and articles of incorporation have been duly recorded and filed containing provisions substantially similar to those for incorporation under the provisions of this act, such corporation may, with the approval of the governing body of the municipality in which it is located, be and become validated ab initio as a corporation organized under and



governed by the provisions of this act with respect to any bonds theretofore issued and all other matters concerning its affairs and business by executing and filing with the Secretary of State a certificate of its adoption of this act.

Sec. 19. This act shall be known and may be cited as the Nebraska Industrial Development Corporation Act.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.