

LEGISLATIVE BILL 501

Approved by the Governor February 15, 1994

Introduced by Day, 19; Schellpeper, 18

AN ACT relating to sanitary and improvement districts; to amend sections 31-727, 31-733, 31-740, 31-744, and 39-1405, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to contracts with certain counties; to provide for reimbursement for mileage expenses; to authorize the removal of snow and ice from streets as prescribed; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 31-727, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-727. (1) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for the purpose of installing electric service lines and conduits, a sewer system, a water system, a civil defense warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, and contracting for gas and for electricity for street lighting for the public streets and highways within such proposed district, constructing and contracting for the construction of dikes and levees for flood protection for the district, and acquiring, improving, and operating public parks, playgrounds, and recreational facilities.

The sanitary and improvement district may also contract with ~~the a~~ county within which all or a portion of such sanitary and improvement district is located or a city or county within whose zoning jurisdiction such sanitary and improvement district is located for any public purpose specifically authorized in this section.

Sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts.

Nothing in this section shall authorize districts to purchase electric service and resell the same.

The district, in lieu of establishing its own water system, may contract with any utilities district, municipality, or corporation for the installation of a water system and for the provision of water service for fire protection and for the use of the residents of the district.

For the purposes listed in this section, such majority of the owners may make and sign articles of association in which shall be stated (a) the name of the district, (b) that ~~same shall~~ the district will have perpetual existence, (c) the limits of the district, (d) the names and places of residence of the owners of the land in the proposed district, (e) the description of the several tracts of land situated in the district owned by those who may organize the district, (f) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district, but who will be benefited thereby, and (g) whether the purpose of the corporation ~~shall be~~ is installing gas and electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, or, when permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, contracting for any public purpose specifically authorized in this section, or combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as

are unknown may also be set out in the articles as such.

No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them to pay the expenses that may be necessary to install a sewer or water system or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regraveling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin, the cost of constructing public waterways, docks, or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and, when permitted by this section, the cost of contracting for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and the cost of contracting for any public purpose specifically authorized in this section, as provided by law.

(3) The articles shall propose the names of five or more trustees who ~~are~~ shall be owners of real estate located in the proposed district, to serve as a board of trustees until their successors are elected and qualified, ~~should if such district be is~~ organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) For the purposes of sections 31-727 to 31-762 and 31-771 to 31-780, unless the context otherwise requires:

(a) Public waterways shall mean artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses shall mean and include, but not be limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay shall mean expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant shall mean an investment security under article 8, Uniform Commercial Code, in the form of a short-term, interest-bearing order payable on a specified date issued by the board of trustees or administrator of a sanitary and improvement district to be paid from funds expected to be received in the future, including, but not limited to, property tax

collections, special assessment collections, and proceeds of sale of general obligation bonds;

(e) General obligation bond shall mean an investment security under article 8, Uniform Commercial Code, in the form of a long-term written promise to pay a specified sum of money, referred to as the face value or principal amount, at a specified maturity date or dates in the future, plus periodic interest at a specified rate; and

(f) Administrator shall mean the person appointed by the Auditor of Public Accounts pursuant to section 31-771 to manage the affairs of a sanitary and improvement district and to exercise the powers of the board of trustees during the period of the appointment to the extent prescribed in sections 31-727 to 31-780.

Sec. 2. That section 31-733, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-733. Within thirty days after the district court shall have declared the district a public corporation, the trustees so appointed by the court shall meet and elect one of their number chairperson and one of their number clerk of the district. Except as otherwise provided, the board shall (1) adopt a seal, bearing the name of the district, (2) keep a record of all of its proceedings which shall be open to inspection by all owners of real estate in the district, (3) have the power to pass all necessary ordinances, orders, rules, and regulations for the necessary conduct of its business and to carry into effect the objects for which such sanitary and improvement district was formed, and (4) have authority to appoint, employ, and pay an engineer, or firm of engineers, an attorney, a fiscal agent, and such clerical help as may be needed, who shall each be removable at the pleasure of the board or administrator. The clerk of ~~such the~~ board shall be paid a salary of not to exceed six hundred dollars per year. Upon the appointment of an administrator for the district pursuant to sections 31-771 to 31-780, the authority of the trustees to exercise the powers granted in this section shall be suspended, except that ~~such the~~ board shall continue in existence and the administrator shall periodically, but not less frequently than monthly, report to ~~such the~~ board in writing on all decisions and actions taken by the administrator in managing the affairs of the district. The administrator shall, during the period of his or her appointment, possess exclusive authority to exercise the powers and duties conferred in sections 31-727, 31-727.02, 31-733, 31-734, 31-737, 31-739, 31-740, 31-741 to 31-748, 31-749 to 31-756, 31-759, and 31-764 to 31-770. Each trustee shall be paid three dollars for each meeting of ~~said the~~ board which he or she attends and shall be allowed reimbursement for mileage as provided in section 81-1176.

Sec. 3. That section 31-740, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-740. The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, a civil defense warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regravelling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district. The board of trustees or the administrator of any district may contract for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers herein granted in this section. Any sewer system established shall be approved by the Department of Health.

Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county wherein such improvements are located and plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing held not less than five days after notice of the hearing has been published in a newspaper of general circulation in such municipality or county. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards theretofore established by such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. In cases when such improvements are within the area of the zoning jurisdiction of more than one municipality, then such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval may in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation, public power district, electric membership or cooperative association, or municipality for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, or for the installation, maintenance, and operation of electric service lines and conduits, and to provide water service for fire protection and use by the residents of the district. It may also contract with any corporation, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with the a county within which all or a portion of such sanitary and improvement district is located or a city or county within whose zoning jurisdiction the sanitary and improvement district is located for any public purpose specifically authorized in this section.

Each sanitary and improvement district shall have the books of account, kept by the board of trustees of the district, examined and audited by a certified public accountant or a public accountant for the year ending June 30 and file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (1) the gross income of the district from all sources for the previous year, (2) the amount spent for sewage disposal, (3) the amount expended on water mains, (4) the gross amount of sewage processed in the district, (5) the cost per thousand gallons of processing sewage, (6) the amount expended each year for (a) maintenance and repairs, (b) new equipment, (c) new construction work, and (d) property purchased, (7) a detailed statement of all items of expense, (8) the number of employees, (9) the salaries and fees paid employees, (10) the total amount of taxes levied upon the property within the district, and (11) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and

character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

If should any sanitary and improvement district fail or refuse fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served in the same manner as special taxes or assessments are assessed by such city and collected and returned in the same manner as other municipal special taxes or assessments are enforced and collected. When any such tax or assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the same as provided by law and return the same to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees shall have power, in connection with the issuance of any warrants or bonds of the district, to agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and shall also have power to agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Sec. 4. That section 31-744, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-744. Whenever the board of trustees or the administrator shall deem deems it advisable or necessary to build, reconstruct, purchase, or otherwise acquire a water system, a civil defense warning system, a sanitary sewer system, a sanitary and storm sewer or sewage disposal plant or pumping stations or sewer outlets, gas or electric service lines and conduits constructed or to be constructed in whole or in part inside or outside of the district, a system of sidewalks, public roads, streets, and highways wholly within the district, public waterways, docks, or wharfs, and related appurtenances wholly within the district, or a public park or parks, playgrounds, and recreational facilities wholly within the district, to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or to contract for the installation and operation of a water system, it shall declare the advisability and necessity therefor in

a proposed resolution, which resolution, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, and shall include cement concrete pipe and vitrified clay pipe and any other material deemed suitable, and shall state the size or sizes and kinds of sewers proposed to be constructed, and shall designate the location and terminal points thereof. If it is proposed to construct a water system, disposal plants, pumping stations, outlet sewers, gas or electric service lines and conduits, or a system of sidewalks, public roads, streets, or highways, or public waterways, docks, or wharfs, to construct or contract for the construction of dikes and levees for flood protection for the district, or public parks, playgrounds, or recreational facilities, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall refer to the plans and specifications thereof which shall have been made and filed before the publication of such resolution by the engineer employed for such purpose. If it is proposed to purchase or otherwise acquire a water system, a sanitary sewer system, a sanitary or storm water sewer, sewers, sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits, or public parks, playgrounds, or recreational facilities or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the price and conditions of the purchase or how such facility is being acquired. If it is proposed to contract for the installation and operation of a water system for fire protection and for the use of the residents of the district, to contract for the construction of dikes and levees for flood protection for the district or gas or electric service lines and conduits, to contract with a county within which all or a portion of such sanitary and improvement district is located or a city or county within whose zoning jurisdiction the sanitary and improvement district is located for any public purpose specifically authorized in this section, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the principal terms of the proposed agreement and how the cost thereof is to be paid. When gas or electric service lines and conduits are among the improvements that are proposed to be constructed, purchased, or otherwise acquired or contracted for, and no construction specifications and standards therefor have been established by the municipality having zoning jurisdiction over the area where such improvements are to be located, or when such service lines and conduits are not to be located within any municipality's area of zoning jurisdiction, the plans and specifications for and the method of construction of such service lines and conduits shall be approved by the supplier of gas or electricity within whose service or customer area they are to be located. Such engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost. The board of trustees or the administrator shall assess, to the extent of special benefits, the cost of such improvements upon properties specially benefited thereby. The resolution, mentioned in this section, shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Sec. 5. That section 39-1405, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1405. (1) All public streets of unincorporated villages are a part of the public roads and shall be worked and maintained by the respective county or township authorities.

(2) The county board of commissioners in counties having a population of sixty thousand inhabitants or more may, after the clearance of snow and ice from the county road system, clear snow and ice from all public streets of incorporated sanitary and improvement districts in the same manner as if such streets were part of the county road system.

Any county board performing such snow and ice clearance in a sanitary and improvement district shall not be held liable for any damages arising from such snow and ice clearance, unless damages arise as a result of gross negligence.

(3) The county board of commissioners in counties having a population of sixty thousand inhabitants or more may enter into contracts with incorporated associations of homeowners representing at least fifty individual housing units which are located wholly within the county and are not part of

any sanitary and improvement district or incorporated municipality for the provision of road maintenance services or snow and ice removal services on nonpublic roads which serve the homeowner association. Such contracts shall provide for payment to the county of an amount which fairly represents the cost to the county of providing such additional services.

Sec. 6. That original sections 31-727, 31-733, 31-740, 31-744, and 39-1405, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.